

No. 2425

United States
Circuit Court of Appeals
For the Ninth Circuit.

FARMERS AND MERCHANTS' BANK,
PHOENIX, as Intervener,
Appellant,
vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY and SIMS ELY, as Receiver for
the ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION and ARIZONA
TRUST COMPANY, and the Intervening
Petitioners Who were Allowed to Intervene
in the Cause Entitled CHARLES W.
CLARK, Complainant, vs. ARIZONA MU-
TUAL SAVINGS AND LOAN ASSOCIA-
TION and ARIZONA TRUST COMPANY,
Defendants, in the Court Below, by the Decree
of March 12, 1914,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Arizona.

Filed

JUL - 1 1914

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Answer

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the
District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

Final Decree [Feb. 27, 1913.]

THIS CAUSE came on to be heard at this term of the court, and, after hearing the witnesses and receiving the evidence offered in support of the claims of the interveners herein and after hearing counsel for the interveners and counsel for the defendants as to the final decree to be entered herein, and upon a full consideration thereof, it was ordered, adjudged and decreed, as follows:

FIRST: That the persons hereinafter named in this paragraph are interveners in the above-entitled cause who are still stockholders in the defendant Arizona Mutual Savings and Loan Association, and, as such, have paid in to said defendant Arizona Mutual Savings and Loan Association the following sums set opposite the names of each:

John Dennett, Jr.....	\$352.00
J. G. Bogard.....	180.00
J. J. Keating.....	36.00
Rose Boehmer	360.00
Mary Bleak	72.00
Harry E. Harter.....	168.00

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H. S. Gray..... 570.00

Mary E. Ellsworth..... 891.78

[1*]

L. M. Gustafson.....\$500.00

A. H. Ferrin..... 288.00

Lucy H. Purdum..... 144.00

H. P. Wightman..... 450.00

A. C. Lockwood..... 472.00

Alex Anderson.... 675.00

D. Bohn..... 600.00

Erit Equist..... 450.00

A. H. Oeltjen..... 252.00

George S. Hughes..... 288.00

Mrs. W. J. Jackson..... 114.00

Lysander Cassidy..... 307.00

Ramon Brenna.... 180.00

SECOND: That the persons hereinafter named in this paragraph are interveners herein who were formerly stockholders in the defendant Arizona Mutual Savings and Loan Association, but who have exchanged their stock in the defendant Loan Association for stock in the defendant Arizona Trust Company, and that said persons are hereinafter referred to as "exchanging stockholders" in the defendant Loan Association, and that each of the persons named in this paragraph have heretofore paid in to the defendant Loan Association or to the defendant Trust Company the following sums set opposite the names of each:

Ross H. Blakely.....\$ 72.00

John W. Harris, Jr..... 126.00

*Page-number appearing at foot of page of original certified Record.

A. E. Morcom.....	450.00
Fred W. Albright.....	60.00
M. Kirshwing....	474.40
Olaf Olsen....	266.44
Theo. Holten and Ole Holten....	256.43
Hugo Sandquist....	1049.33

[2]

Eugene Seeley....	\$ 558.21
James H. East.....	351.21
Fred Cadwell....	352.67
Margaret Cadwell....	1211.98
E. B. Tinker.....	312.00
E. L. Hosler.....	390.00
S. L. Hosler.....	264.00
Glenn W. Morse.....	324.00
N. G. Tang Fong.....	192.00
A. E. Gillard.....	504.00
J. C. Wilhelm.....	210.00
Frank A. Moss.....	252.00
Geo. K. Anderson.....	504.00
L. D. LaChance.....	180.00
Grace Langston....	600.00
Frank A. Flickeringer....	280.00
Charles J. Patterson.....	270.00
E. T. Staebler.....	458.00
Nettie Sheldon....	282.00
Lloyd C. Henning.....	210.00
Wilson Patterson....	264.00
E. W. Clayton.....	864.00
William C. Faulkner.....	1000.00
Walter W. Williams.....	402.00
J. N. Stratton.....	204.00

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W. E. Platt.....	204.00
John F. Weber.....	192.00
S. G. Ijams.....	300.00
Ida N. Frye.....	600.00
William Sobey....	318.00
William Whalley.....	318.00
O. W. Miller.....	354.00

[3]

William H. Watts.....	\$1680.00
Globe Lumber Company.....	899.10
Alfred Hansen....	552.00
Clara F. Bloom, nee Clara Ferrin..	318.00
Orville Young....	204.00
Fred W. Horn.....	285.00
J. C. Bradley.....	300.00
Oliver Myers....	180.00
J. W. McLean.....	600.00
Joseph Carpenter....	216.00
John Steigler....	696.00
C. R. Freeman.....	312.00
M. A. Ramirez.....	216.00
E. J. Brunenkant.....	111.00
C. Brunenkant.....	90.00
Thomas Weedon.....	132.00
Frederick E. White.....	288.00
Frederick E. White, assignee of Ah Lee....	225.00
Sam Y. Barkley.....	150.00
M. D. Langley.....	660.00
Mrs. J. N. Russell.....	374.38
Cora E. Dunagan.....	450.00
Helen Weber.....	236.00

W. E. Young.....	252.00
Mrs. M. L. Graves.....	297.36
Mrs. W. S. Hurst.....	297.53
Mrs. C. S. Brown.....	318.45
Maria B. Stevens.....	290.04
A. T. Kleinschmidt.....	233.40
Rosario C. Brena.....	114.00
A. J. Durago.....	312.00

[4]

H. Capin.....	\$ 75.00
L. C. Frederico.....	156.00
E. T. Collins.....	96.00

THIRD: That heretofore and in or about the month of March, 1911, the defendant Arizona Trust Company was, by those in control of the defendant Arizona Mutual Savings and Loan Association, caused to be organized; and that at or about said time the defendant Loan Association was insolvent and unable to meet its obligations to its stockholders as said obligations were accruing, and that the purpose of the organization of the defendant Trust Company was to take over the assets and properties of the said defendant Loan Association, and to engage in the business of conducting and maintaining the said defendant Trust Company.

FOURTH: That as to the interveners herein and other non-consenting stockholders in the defendant Loan Association, who had never transferred their stock therein for stock in the defendant Trust Company, the said proposed transfer of the assets and properties of the defendant Loan Association to the defendant Trust Company was unlawful and invalid

and not binding upon the interveners herein or upon the other outstanding and non-exchanging stockholders in the defendant Loan Association.

FIFTH: That pursuant to such purpose, all of the assets and properties of the defendant Loan Association were subsequently transferred to the defendant Trust Company, since which time the defendant Trust Company and its officers have dealt with the said assets and properties as though owned by the defendant Trust Company and have confused and inseparably mingled the assets derived from the defendant Loan Association with the assets of the defendant Trust Company, and that at this time it is impracticable and impossible in justice to the parties hereto to [5] direct and enforce a re-transfer of all of the original properties and assets so derived by the defendant Trust Company, and the profits thereon, from the defendant Loan Association to said last named Company or the receiver of said Company.

SIXTH: That all of the interveners above named, described herein as "exchanging stockholders" in the defendant Loan Association, were induced to exchange their said stock in the defendant Loan Association for stock in the said defendant Trust Company in reliance upon representations theretofore made to them in the printed literature of one or both defendants and by verbal statements made to them by the representative of the defendants, and that such representations were in fact false and were known by the defendants to be false when made, and induced the said interveners to make the exchange

of their said stock as aforesaid; in consequence whereof, the Court decrees that the said interveners named herein as exchanging stockholders in the defendant Loan Association be, and each of them hereby is, allowed and permitted to rescind the said exchange of their stock; and it is hereby ordered and decreed that each of said "exchanging stockholders" be, and they hereby are, restored to their original position and status as stockholders of the defendant Loan Association, and each of said "exchanging stockholders" is hereby deprived of his status of a stockholder in the defendant Trust Company.

SEVENTH: And to the end that the rights of all of the interveners herein and of the outstanding stockholders in the defendant Loan Association who never exchanged their stock therein for stock in the defendant Trust Company may be adequately preserved and protected, the Court hereby confirms the sale and transfer of all of the assets of the defendant Loan Association to the defendant Trust [6] Company, and adjudges that complete title is vested in the defendant Trust Company of, in and to all of the assets and properties of whatsoever kind or nature heretofore owned by the defendant Loan Association, subject only to the lien and charges hereinafter specified.

EIGHTH: And for the further protection of the rights of the said interveners and the said stockholders in the defendant Loan Association who never exchanged their stock therein for stock in the defendant Trust Company, the Court adjudges and determines that all of the assets and properties now

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or hereafter owned or acquired by the defendant Trust Company be, and they hereby are, impressed with the trust and lien in favor of each of the said interveners named herein to the extent and amount set opposite the names of each, and in favor of the stockholders in the defendant Loan Association who never exchanged their stock therein for stock in the Trust Company for the amounts heretofore paid in by such last named persons in the following names and amounts:

S. Arneson	\$3349.10
Mrs. H. C. Bagge.....	321.96
A. M. Baker.....	238.00
A. Barrasa	82.00
Ed. Barry	140.00
H. L. Bedford.....	185.00
L. Bejarano	100.00
A. C. Bittick.....	114.00
R. R. Brenz.....	523.48
D. A. Burke	360.00
A. E. Carillo.....	314.86
D. H. Butris.....	165.00
W. H. Caruthers.....	300.00
R. F. Chamberlain.....	78.00
[7]	
D. P. Clanton.....	100.00
T. N. Clanton.....	112.00
J. S. Clark.....	174.00
S. B. Lucas.....	902.00
E. J. Doyle.....	96.00
A. J. Durazo.....	242.00
Mrs. L. C. Earle.....	84.00

Miss V. Espionozza.....	168.00
A. H. Ferrier.....	296.00
C. Hagerland	911.65
J. R. Hampton.....	77.00
Wade Hampton	541.06
C. F. Holdsworth.....	637.80
D. P. Jones.....	98.00
H. A. Kendall.....	71.00
A. Maurino	950.00
C. Monroe	112.00
E. Morales	109.00
Mrs. L. R. Morris.....	297.90
F. E. Murphey.....	327.72
Jennie McCarthy	570.00
W. W. McNeff.....	130.00
Ida Patterson	79.43
J. S. Patten.....	956.70
C. Purtyman	108.96
C. Purtyman	175.70
G. R. Robinette.....	156.00
A. D. Rosecrans.....	192.00
A. D. Rosecrans.....	551.86
T. A. Sanders.....	350.00
Short and Ward.....	112.00
Short and Ward	93.00

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J. C. Simmons	234.84
A. K. Snider.....	114.00
B. D. Snider.....	114.00
M. M. Stacy.....	114.00
R. W. Sturgis.....	516.64
J. H. Thompson.....	1019.43

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J. Barragan	101.00
J. Wagner	124.59
Mrs. E. Widner.....	405.16
A. Millett	989.00
M. Potter	1098.65
A. H. Hammer.....	370.00
Wade Hampton	406.73

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NINTH: And to effectuate this decree and to enable it expeditiously and economically to be carried into full force and effect, the Court directs George D. Christy, Esq., as the temporary receiver of the defendant Loan Association, heretofore duly appointed, to account to the Court and to surrender and deliver to the permanent receiver of the defendant Trust Company, hereinafter named, all of the assets and property of whatsoever kind or nature which have heretofore come into his hands as such receiver; and it is adjudged and decreed that the accounts of said receiver presented simultaneously herewith are passed and adjudged to be in all things correct, and the bond of the said receiver is hereby cancelled and the sureties thereon exonerated from further liability thereon; and the Court discharges the said George D. Christy, Esq., as receiver of the defendant Loan Association and from all further responsibility and liability arising out of said receivership; and it appearing to the Court's satisfaction that the said George D. Christy, Esq., as receiver, has fully and faithfully discharged the duties of his trust, and in connection therewith it has been necessary for the said receiver to retain

counsel, and that, by reason of such necessity, said receiver has retained Messrs. Chalmers and Kent as his counsel, which counsel have rendered substantial and valuable services to the said receiver in the conservation and preservation of the estate of which the said George D. Christy, Esq., was receiver; and it appearing to the Court's satisfaction that counsel for the interveners herein has rendered substantial services of value to all of the interveners and to all of the stockholders of the defendant Loan Association, named in the preceding paragraph, and that said services have resulted in the production of a fund in Court consisting of the assets of the said defendant Loan Association and of the assets of the said defendant Trust Company for the benefit of the said interveners named herein and for the benefit of the stockholders of the defendant Loan Association, named in the [10] preceding paragraph, and the cause being one of extraordinary and *exception* difficulty and the Court being fully advised by proof of the value of the services rendered: Now, therefore, in accordance with the usual practice of the Court in such cases, the Court fixes the allowances of the said George D. Christy, Esq., as receiver, and of his counsel, and of the counsel for the interveners herein, as follows:

To George D. Christy, Esq., for services rendered as aforesaid, Twelve Hundred and Fifty Dollars (\$1250.00);

To Messrs. Chalmers and Kent, for services rendered as counsel for said receiver, Twelve Hundred and Fifty Dollars (\$1250.00);

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To the interveners above named upon account of the services rendered to them in this proceeding by their counsel, William M. Seabury, Three Thousand Three Hundred Seventy-six and 06/100 Dollars (\$3376.06).

And the Court further directs the permanent receiver, hereinafter named, to pay the items appearing upon the account of George D. Christy, Esq., as receiver of the defendant Loan Association, which are unpaid and which are hereby allowed.

TENTH: And the Court hereby appoints Sims Ely, Esq., as permanent receiver of the defendant Arizona Mutual Savings and Loan Association and of the defendant Arizona Trust Company; and the said Sims Ely, Esq., having duly presented his accounts as temporary receiver of the defendant Trust Company, the said accounts are hereby passed and allowed; and the fees of the said Sims Ely, Esq., as temporary receiver, are hereby fixed in the sum of Seven Hundred and Fifty Dollars (\$750.00); and it appearing to the Court's satisfaction that the said receiver has necessarily employed Clyde M. Gandy, Esq., as Counsel, and that he has rendered substantial [11] services to the said temporary receiver in aid of said receiver, the compensation of the said Clyde M. Gandy, Esq., for services rendered to the said Sims Ely, Esq., as temporary receiver, is hereby fixed in the sum of Seven Hundred and Fifty Dollars (\$750.00); and full power and authority is hereby conferred upon the said Sims Ely, Esq., as permanent receiver, to do and perform all such acts as may be necessary and proper to be done by a per-

manent receiver, in accordance with the usual practice of this Court in such and similar cases; and the said receiver is hereby directed to sell at public or private sale and upon such terms as to the said receiver may seem proper, but subject to the future ratification and confirmation of the Court, so much or the whole of the assets and properties of the defendant Trust Company as may be necessary first to pay and discharge the allowances heretofore made as the costs of administration of the insolvent estate of the said defendant Loan Association, and thereafter to discharge and pay the costs and expenses incident to the administration of the estate of the said defendant Trust Company, including the allowance hereafter to be made to the said Sims Ely, Esq., as permanent receiver and to his counsel in the premises, and that thereafter he pay *pro rata* in equal shares to each and all of the interveners herein and to the stockholders of the defendant Loan Association, named in the preceding eighth paragraph, such sums of money as may be received by such permanent receiver until the said interveners and the said non-exchanging Loan Association stockholders, named in the preceding eighth paragraph, are paid in full the amounts set opposite their respective names herein; and that the said receiver pay the balance remaining thereafter, if any, in his hands to the defendant Trust Company for the benefit of such persons as may be lawfully entitled thereto.

ELEVENTH: And the Court hereby vests the said Sims Ely, Esq., as permanent receiver, with all the rights, title, benefits and privileges heretofore

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existing in the defendant Arizona Mutual Savings and Loan Association and in the said George D. Christy, Esq., [12] as temporary receiver thereof, with full power to said permanent receiver (to be substituted in his capacity as permanent receiver) of the defendant Arizona Mutual Savings and Loan Association or as permanent receiver of the defendant Arizona Trust Company, or both, in any and all litigation in which the defendant Loan Association, or the said George D. Christy, Esq., as temporary receiver thereof, or in which the defendant Trust Company, or the said Sims Ely, Esq., as temporary receiver thereof, may be a party, or in which the said defendant Loan Association, or said George D. Christy, Esq., as temporary receiver may have an interest; and full power and authority is hereby given to said Sims Ely, Esq., as permanent receiver, to employ and compensate, as in his judgment may seem proper, such counsel or other assistants and employees as in the judgment of the said Sims Ely, Esq., as permanent receiver, may be for the benefit of the estate of which the said Sims Ely, Esq., is hereby appointed permanent receiver.

TWELFTH: And any and all persons having any property or assets of either defendant are hereby directed to deliver forthwith to the said Sims Ely, Esq., as permanent receiver of the defendants above named, all such property or assets in which either or both defendants have or claim to have an interest; and the said defendants, and each of them, and all of the officers, directors, agents and representatives of the said defendants, and all persons claiming from,

through or under them, or either of them, are hereby enjoined and restrained from in any way disposing of any of the properties of the defendants above named, or either of them, and from interfering or in any way embarrassing the said receiver in the performance of his said duties.

DONE in open court, this 27th day of February, 1913.

(Signed) RICHARD E. SLOAN,
United States District Judge. [13]

[Endorsements]: No. 53. District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association, and Arizona Trust Company, Defendants. (Original.) Final Decree. Filed March 1, 1913, at 1:00 P. M., Allan B. Jaynes, Clerk. William M. Seabury, Solicitor for the Interveners, No. 306 Fleming Building, Phoenix, Arizona. [14]

**[Order Allowing C. L. Nabers and E. E. Kirkland
Payment for Services Rendered Receiver.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON SATURDAY
MARCH 1, 1913.

No. 53.

CHARLES W. CLARK,

Plaintiff,

vs.

THE ARIZONA MUTUAL SAVINGS & LOAN
ASSOCIATION et al.,

Defendants.

IT IS ORDERED that C. L. Nabers be and hereby is allowed the sum of Two Hundred and Fifty Dollars for services to the receiver herein, and that E. E. Kirkland be and he is hereby allowed the sum of One Hundred Dollars for services rendered the receiver herein. [15]

[Order Directing Alice U. Solomon et al. to Show Cause, etc.]

In the United States District Court for the District of Arizona.

MINUTE ENTRY MADE ON WEDNESDAY,
MARCH 19, 1913.

No. 53.

CHARLES W. CLARK,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

Upon the annexed petition of Sims Ely as permanent receiver of the defendants above named, duly verified March 19, 1913, and upon all of the proceedings heretofore had in the above-entitled cause, and in the cause now pending in this Court wherein George D. Christy, as temporary receiver of the defendant Mutual Savings and Loan Association, is plaintiff, and Alice U. Solomon, the National Bank of Arizona and the Arizona Trust Company are defendants, and upon the proceedings had in the cause

in the Superior Court of Maricopa County, wherein Alice U. Solomon was plaintiff and the defendant, Arizona Trust Company, was defendant;

IT IS HEREBY ORDERED that said Alice U. Solomon, the National Bank of Arizona and the defendant Arizona Trust Company, and each of them, or their respective attorneys, show cause, if any there be, before this Court upon the 24th day of March, 1913, or as soon thereafter as counsel may be heard, why an order should not be made in the above-entitled cause suspending the alleged lien created by the entry and docketing of the [16] judgment in the Superior Court of Maricopa County on January 27, 1913, in favor of the said Alice U. Solomon and against the said Arizona Trust Company, and why the said Sims Ely as permanent receiver of the defendants above named should not have the other relief prayed for in the petition hereto annexed; and why the said receiver should not have such other and further relief as to the Court may seem proper; and sufficient reason appearing therefor,

IT IS ORDERED that service of a copy of this order upon Messrs. Armstrong and Lewis, Solicitors in this court, as attorneys for the said National Bank of Arizona, and the said Alice U. Solomon, on or before March 20, 1913, shall be deemed sufficient notice hereof. [17]

**[Order Ratifying and Approving Contract Between
Permanent Receiver and J. W. Walker, etc.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON WEDNESDAY,
MARCH 19, 1913.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and the ARIZONA TRUST
COMPANY,

Defendants.

The application of Sims Ely, as permanent receiver of the defendants above named, for an order ratifying and confirming the sale of all of the right, title and interest of the said receiver and of both of the defendants above named, of, in and to each and all of the premises described in that certain contract dated March 19, 1913, by and between the said receiver and J. W. Walker of Phoenix, Arizona, regularly coming on to be heard, and after hearing Clyde M. Gandy, Esq., as counsel for said receiver and William M. Seabury, Esq., as counsel for the interveners in the above-entitled cause, and the Court being fully advised in the premises, and due deliberation having been had:

Now, therefore, on motion of Clyde M. Gandy, Esq., attorney for said receiver, IT IS HEREBY

ORDERED, That the said contract between said permanent receiver and said J. W. Walker, described herein, be, and the same hereby is, in all respects ratified and approved.

AND IT IS FURTHER ORDERED that upon receipt of the sum of Five Thousand Dollars from the said purchaser, the [18] said receiver shall, and he is hereby ordered and directed, to make, execute, acknowledge and deliver, in accordance with the terms of the said contract, deeds, and conveyances and all other instruments necessary to convey to the said purchaser all of the rights, title and interest of the said Sims Ely as permanent receiver and of both of the defendants above named, of, in and to each and all of the properties mentioned and described in the said contract herein referred to. [19]

**[Order Continuing Hearing of Order to Show Cause
Until April 3, 1913.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON MONDAY, MARCH
24, 1913.

No. 53.

CHARLES W. CLARK,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSO-
CIATION and ARIZONA TRUST COM-
PANY,

Defendants.

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By consent of counsel for the respective parties hereto, IT IS ORDERED that the hearing of the order to show cause directed to Alice U. Solomon and the National Bank of Arizona be continued until Thursday, April 3, 1913, at 10:00 o'clock A. M.
[20]

**[Order Postponing Lien Until Terms and Conditions
of Final Decree be Fully Performed and Satis-
fied, etc.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON THURSDAY,
APRIL 3, 1913.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and the ARIZONA TRUST
COMPANY,

Defendants.

The motion of Sims Ely as permanent receiver of the defendants above named for an order suspending and postponing the lien of the judgment recovered by Alice U. Solomon against the defendant Arizona Trust Company in the Superior Court of Maricopa County, Arizona, on January 27th, 1913, regularly coming on to be heard, and upon hearing William M. Seabury, as counsel for the said receiver, and Ernest

W. Lewis, as counsel for the National Bank of Arizona and the said Alice U. Solomon, and due deliberation having been had, now, on motion of the said receiver, counsel for the said Alice U. Solomon not opposing, it is hereby

ORDERED, that the lien of the said judgment of the Superior Court of Maricopa County, Arizona, entered January 27th, 1913, in the cause then and there pending wherein Alice U. Solomon was plaintiff and the said Arizona Trust Company was defendant, be and the same is hereby postponed as against any and all of the assets and properties of the defendant Arizona Trust Company until the terms and conditions of the final decree entered in the above-entitled cause on February 27th, 1913, be fully performed and satisfied, and it is hereby [21]

ADJUDGED AND DECREED that any and all of the assets and properties of the said defendants above named, and each of them, which have been or which may hereafter be sold by said receiver under the terms of the said final decree of February 27th, 1913, shall be so sold free and clear of any lien, charge or incumbrance arising out of or by virtue of the said Solomon judgment, and that the lien thereof, if any, shall be and hereby is transferred and declared to attach to the surplus monies, if any, which may remain in the hands of the said receiver after a full compliance with and performance of the terms of the said final decree entered herein on February 27th, 1913. [22]

**[Order Setting Motion to Correct Clerical Error in
Judgment for Hearing.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON SATURDAY,
APRIL 5, 1913.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL AND SAVINGS ASSOCIA-
TION and the ARIZONA TRUST COM-
PANY,

Defendants.

IT IS ORDERED that the motion of D. H. Burtis
to correct a clerical error in the judgment herein be
set for hearing on Monday, April 7, 1913, at 10:00
o'clock A. M. [23]

**[Order Granting Motion for Correction of Clerical
Error in Judgment, and Directing Correction of
Judgment.]**

*In the District Court of the United States for the
District of Arizona.*

MINUTE ENTRY MADE ON MONDAY, APRIL
7th, 1913.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN AS-
SOCIATION and ARIZONA TRUST COM-
PANY,

Defendants.

This matter came on this day regularly to be heard upon the petition of D. M. Burtis to correct a clerical error in the judgment herein. Messrs. Armstrong and Lewis, Esquires, appearing as counsel for the petitioner, C. M. Gandy appearing as counsel for the defendants and William M. Seabury, Esquire, appearing as counsel for the interveners, whereupon the petitioner, in support of his motion, files an affidavit by the petitioner and the matter being fully submitted to the Court and the Court being fully advised in the premises, does grant said motion, and orders that the judgment herein be corrected accordingly. [24]

**[Order Denying Motion of John Dennett, Jr., to
Strike Petition in Intervention of J. L. Warring
et al. from the Files.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON MONDAY, APRIL
14, 1913.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS & LOAN AS-
SOCIATION and ARIZONA TRUST COM-
PANY,

Defendants.

This matter came on this day regularly to be heard upon the motion of John Dennett, Jr., one of the interveners herein to strike the petition of J. L. Warring et al., for intervention from the files, William M. Seabury, Esquire, appearing as counsel for the said intervener and Benton Dick, Esquire, appearing as counsel for the petitioners. Argument of the respective counsel was had *the* the matter being fully submitted to the Court, and the Court being fully advised in the premises, does deny said motion. [25]

**[Order Denying Petition of J. L. Warring et al. for
Leave to Intervene.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON MONDAY, APRIL
14, 1913.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSO-
CIATION and the ARIZONA TRUST COM-
PANY,

Defendants.

This matter came on this day regularly to be heard upon the petition of J. L. Warring and others for leave to intervene herein, Benton Dick, Esquire, appearing as counsel for the said petitioners and William M. Seabury, Esquire, as counsel for John Dennett et al., interveners. Argument of the respective counsel was had and the matter being fully submitted to the Court, and the Court being now fully advised in the premises, does deny said petition for the reason that it does not contain facts sufficient to sustain the order prayed for. [26]

**[Order Directing Receiver to Give a Bond in the Sum
of \$25,000.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON MONDAY, APRIL
14, 1913.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

THE ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and the ARIZONA TRUST
COMPANY,

Defendants.

It is by the Court ordered that the receiver herein
give a bond in the sum of Twenty-five Thousand
Dollars (\$25,000.00), *condition* upon a faithful dis-
charge of his duties as said receiver, said bond to be
approved by the Court. [27]

[Order Approving Bond of Receiver.]

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON TUESDAY, APRIL
15, 1913.
No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSO-
CIATION and the ARIZONA TRUST COM-
PANY,

Defendants.

It is by the Court ordered that the bond of Sims
Ely, as receiver, in the sum of Twenty-five Thousand
Dollars (\$25,000.00), with the American Surety Com-
pany of New York as surety, be and the same is
hereby approved. [28]

*In the District Court of the United States for the
District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN AS-
SOCIATION and ARIZONA TRUST COM-
PANY,

Defendants.

**Motion [to Set Aside Decree and That Petitioners be
Allowed to Intervene].**

Come now the petitioners in intervention and move this Honorable Court that the decree heretofore, and on the 27th day of February, 1913, entered in the above-entitled cause be set aside and held for naught, and that petitioners be allowed to intervene and for such other and further relief as the Court may deem equitable.

That said motion is based upon the verified petition of petitioners hereto attached.

ROBERT E. MORRISON,
JOSEPH E. MORRISON and
BENTON DICK,

Solicitors and Attorneys for Petitioners.

To the Defendants Arizona Mutual Savings and Loan Association and Arizona Trust Company and Sims Ely, Receiver.

You will please take notice that the foregoing motion will be presented to this Honorable Court as soon as counsel can be heard.

ROBERT E. MORRISON,
JOSEPH E. MORRISON and
BENTON DICK,

Solicitors and Attorneys for Petitioners. [29]

**[Petition of J. L. Waring et al. for Leave to
Intervene.]**

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN AS-
SOCIATION and ARIZONA TRUST COM-
PANY,

Defendants.

The petition of J. L. Waring, C. T. Wise, Frank Pister, Mrs. C. F. Richardson, Lulu Y. Carruthers, Daniel Hibbard, G. E. Phelps, Lesuer & Co., J. H. Barnett, R. N. Stapley, C. H. Schultz, R. W. Wagoner, Frank W. Smakel, Thomas A. Rickel, Fred Hensing, Margaret Babbett, David B. Lovell, J. W. Francis, G. I. Smith, August P. New, Edgar A. Brown, Martin F. Taylor, August Johnson, John P. Steinmetz, August Schwalbe, Irving De Vry, Inocente Morales, Oscar Emerson, Stella Wade, John F. Klock, F. W. Smith, Chas. Cahn, Maude Webster, Elmer G. Carroll, Francis X. Courard, B. Hock, John Wagner, Mariana Pascale, J. Knox Corbett, Sarah Oliver, Y. M. Gallegos, D. W. Ellsworth, Ernestine B. Robles, Rena Ridley, J. T. Griffiths, Joshua Willis, Versa Willis, Pearl Bailey, Emma B. Jennings, D. Keith, J. S. Merritt, W. H. Merritt, Frank L. Burgett, M. A. Roberts, Chlora Polk, Nellie I.

Roberts, Lizzie Polk, Charlotte Monroe, P. W. Black, Mrs. L. B. Allison, Henry O. Jaasted, Mrs. I. Bartholomew, Martha A. Kreiling, Thomas W. Massie, Hurum Brinkerhoff, F. T. Willis, D. C. Palmer, T. R. Blomberg, D. F. Goggans, Franklin E. Potts, Demetrio Romero, Andrew P. Martin, J. G. Sturgeon, Leonor Federico, J. M. Biggs, B. Caretto, James J. Devine, Roger W. Bishoff, Albert Sandoval, Nelson Gorman, Minnie C. Blesi, Elene V. Lincoln, Amalia Scheurle, Sarah E. Marsh, Elizabeth C. Devine, Annie H. Curley, Charles L. Day, R. C. Smith, E. A. Jacobs, Virginia A. Rosenfeld, [30] Harry B. Wilcox, C. N. Cotton, Joseph Morello, L. F. Kuhn, William Ham, Archie Chisholm, J. W. McLaughlin, intervening petitioners herein, through their attorney and solicitors, Joseph E. Morrison and Benton Dick, and respectfully allege and show to this Honorable Court:

(I.)

That heretofore, and on the 15th day of July, 1912, there was filed in this Honorable Court a bill of complaint in equity, wherein one Charles W. Clark was complainant and the Arizona Mutual Savings and Loan Association and the Arizona Trust Company were defendants; that said suit was brought by the complainant above named, in behalf of himself and all others similarly situated as stockholders in the defendant, the Arizona Mutual Savings and Loan Association, for the relief prayed for in said bill of complaint, and that the final decree in said cause was entered on the 27th day of February, 1913, as hereinafter set forth.

(II.)

That all of your petitioners except John Wagner have been stockholders in the Arizona Trust Company since about the 1st day of May, 1912, and that your petitioner, John Wagner, has been a stockholder in the Arizona Mutual Savings and Loan Association since about the 1st day of April, 1911.

(III.)

That your petitioners desire to intervene in the above-entitled cause in support of the allegations contained in complainant's bill heretofore filed herein and in support of the allegations in this petition to the end that the rights of your petitioners, and each of them, as well as those who have not joined in this petition, in connection with all of the matters set forth in said complainant's bill and said petition may be submitted to the jurisdiction of this Court, by it to be dealt with in accordance with law and equity and the rules [31] and practice of this Honorable Court. And in this connection your petitioners, in support of this their petition for leave to intervene herein, refer to and beg leave to make a part hereof, each and every paragraph of complainant's bill of complaint herein, in so far as the same may be applicable to the case of your petitioners.

(IV.)

That in addition to the matters set forth by reference to complainant's bill as aforesaid, your petitioners herein, who are stockholders in the defendant Arizona Trust Company as aforesaid, allege that heretofore each of said stockholders was a stockholder in the defendant Arizona Mutual Savings and

Loan Association and as such entitled to all the rights and privileges of such stockholder in and to their proportionate shares of the assets and properties of said Arizona Mutual Savings and Loan Association. That at various times subsequent to April, 1911, your petitioners were induced to surrender their stock in the Arizona Mutual Savings and Loan Association, by the false and fraudulent representations made to them by the Arizona Trust Company and the Arizona Mutual Savings and Loan Association.

(V.)

That on or about the 11th day of September, 1912, a receiver was appointed for the Arizona Mutual Savings and Loan Association and on or about the 9th day of November, 1912, a receiver was appointed for the Arizona Trust Company; that your petitioners had no notice of the appointment of said receivers nor any knowledge whatsoever of said appointments; that your petitioners were unaware that said companies were in the hands of a receiver and insolvent until some time in the month of February, 1913; that after the appointment of a receiver for the Arizona Trust Company, as [32] aforesaid, the affairs of said company were so conducted that your petitioners were kept in ignorance of the true conditions, with the result that several of your petitioners made payments on their stock to the Arizona Trust Company at the office of said company in the city of Phoenix, which said payments were accepted by persons in charge of the office of said company and who represented or pretended to represent said company,

when in truth and in fact said persons represented the receiver thereof and that said payments, so made as aforesaid, were accepted by said persons without notice to your petitioners that said concern was in the hands of a receiver.

(VI.)

That on the 27th day of February, 1913, a final decree was entered in the above-entitled cause in which it was adjudged that certain intervening stockholders in the Arizona Mutual Savings and Loan Association and the Arizona Trust Company should receive the sums set opposite their respective names in said decree, which said decree is by reference made a part hereof; that none of your petitioners were mentioned in said decree; that no notice was given petitioners of any pending suit; that petitioners were unaware that said companies were insolvent or that any suit was pending or that their rights were not protected until after the 27th day of February, 1913, that the rights of petitioners have not been determined, and unless said decree is set aside the rights of your petitioners will not be protected for the reasons hereinafter set forth.

(VII.)

That said decree, so entered on the 27th day of February, 1913, as aforesaid, is inaccurate and does not conform with the facts and the records of said companies, in that the names of several stockholders are duplicated therein and that in some instances larger amounts are decreed and ordered paid [33] than the amounts paid in by said stockholders.

(VIII.)

Petitioners further aver that on the 19th day of

March, 1913, Sims Ely, Receiver of the Arizona Mutual and Arizona Trust Companies, entered into an agreement with one J. W. Walker whereby said receiver agreed to dispose of certain real estate to the said J. W. Walker, and that one W. T. Smith guaranteed, or attempted to guarantee, the performance by said J. W. Walker of all his undertakings in that behalf; that petitioners are informed and believe, and therefore state the fact to be, that the price agreed upon between said receiver and said Walker, for said property, is wholly inadequate; that said W. T. Smith, who guaranteed, or attempted to guarantee, the performance of said contract by said Walker, as aforesaid, is the identical W. T. Smith who was president of said Arizona Trust Company for some months prior to the time the receivership proceedings were instituted and who was largely responsible for the failure and insolvency of said company; and that the said Walker and the said Smith have for a number of years been closely associated in different business transactions, and that your petitioners verily believe that the object of making said agreement for the sale of said property was to enable said Smith to cover up former transactions which were detrimental to the best interests of the stockholders; that since said Smith has ceased to be an officer of the said company, and during different stages of the receivership of the Arizona Mutual and Arizona Trust Companies, said Smith and said Walker have dominated and controlled the affairs of said companies, and that they are now attempting to dominate and control the affairs of

said companies and to dictate the policy of the receiver; that the price agreed by said Walker to be paid for said land is, as petitioners are informed and believe and therefore state [34] the fact to be, less than one-half of its actual cash value and that your petitioners verily believe that there is collusion between said Smith and said Walker to purchase said property for much less than its actual value.

(IX.)

That the sums which the receiver is authorized to pay to the various intervening stockholders in the Arizona Mutual and Arizona Trust Companies, under and by virtue of the decree, as aforesaid, nearly equal the present available assets of said companies, and if the sale by said receiver to said Walker is consummated, all of the available assets will have been consumed and nothing will be left for petitioners unless the contract between said receiver and said Walker is rescinded and said decree set aside; that if said decree is not set aside your petitioners will sustain a total loss of all money invested in said companies and will not receive their proportionate share of the assets of said companies nor any thereof.

(X.)

That the said Arizona Mutual Savings and Loan Association and the Arizona Trust Company are wholly insolvent and unable to meet and discharge the various obligations assumed by said companies and that your petitioners have no adequate remedy at law to redress the wrongs and grievances herein

set forth except in a court of equity, and in the above-entitled cause.

Wherefore, your petitioners, and each of them, respectfully pray this Honorable Court;

First. That they and each of them may be permitted to intervene in the above-entitled cause and join in the prayer of the complaint therein.

Second. That the final decree entered in the above-entitled action on the 27th day of February, 1913, be set aside and held for naught and that said case be re-opened and that your [35] petitioners be allowed to intervene to the end that their rights may be protected.

Third. That the order of Court, if any there was, confirming the agreement of sale between the receiver and J. W. Walker be vacated and that the receiver be ordered to rescind said agreement.

Fourth. Your petitioners, who are stockholders in the defendant Arizona Trust Company, pray that the transaction whereby said petitioners assigned and transferred their stock in the defendant Arizona Mutual Savings and Loan Association for stock in the defendant Arizona Trust Company may be rescinded and declared to be of no force and effect.

Fifth. That a restitution or reassignment to the said petitioners of the stock in the Arizona Mutual Savings and Loan Association so transferred by them to the defendant Trust Company be adjudged and decreed and that the cancellation of the certificates of stock received by said petitioners from said Trust Company, as aforesaid, may be ordered.

Sixth. That it be adjudged and determined that

the transaction whereby your petitioners gave up their stock in the defendant Loan Association for stock in the defendant Trust Company is wholly void and of no effect.

Seventh. That the defendant Trust Company be required to make complete restitution of all of the properties heretofore received by it from the defendant Arizona Mutual Savings and Loan Association, together with the interest and income thereon.

Eighth. That said restitution be made to the receiver for the purpose of preserving and taking into his possession all of the assets of both of said defendants and to the end that full and complete justice and equity may be done between all of the parties hereto.
[36]

Ninth. That an accounting between both of said defendant companies be had as well as an accounting between the said defendants and their respective stockholders, and that a master be appointed to take proofs of the facts herein alleged and to determine the rights and equities of all the parties concerned therein, and that the affairs of both companies be wound up, their assets marshalled and distributed to whomsoever may be adjudged to be entitled thereto.

Tenth. That said receiver be restrained from paying any fees or other expenses except upon an order of this Honorable Court until an accounting is had and a hearing touching your petitioners rights in the premises.

Eleventh. That your petitioners have such other and further relief as to the Court may seem meet and

proper, together with the costs and disbursements in this action expended.

ROBERT E. MORRISON,
JOSEPH E. MORRISON,
BENTON DICK,

Solicitors and Attorneys for Petitioners.

United States of America,
State of Arizona,—ss.

Benton Dick, being first duly sworn, deposes and says: That he is one of the solicitors and attorneys for the petitioners above named; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and belief and as to those matters he believes it to be true; that this verification is made for and on behalf of said petitioners.

BENTON DICK. —

Subscribed and sworn to before me this 15th day of July, 1913.

[Seal of Court]

ALLAN B. JAYNES,
Clerk United States District Court,
By Frank E. McCrary,

Deputy. [37]

[Endorsements]: No. 53. In the District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association and Arizona Trust Company, Defendants. Petition. Robert E. Morrison, Joseph E. Morrison and Benton Dick, Solicitors and Attorneys for Petitioners. Filed July 15,

Arizona Mutual Savings & Loan Assn. et al. 39
1913, at — M. Allan B. Jaynes, Clerk. By
Frank E. McCrary, Deputy. [38]

*In the District Court of the United States for the
District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

**Intervening Petition of Farmers and Merchants'
Bank, Phoenix.**

To the Honorable Judge of the District Court of the
United States, for the District of Arizona:

The petition of the Farmers and Merchants' Bank,
Phoenix, the intervener and petitioner above named,
respectfully shows and alleges:

I.

As more fully appears in the records of this court
herein, to all of which your petitioner begs leave
to refer and to make a part hereof, as though set
forth at length, the complainant in the above-entitled
cause was at all times hereinafter mentioned a citi-
zen of the State of California, domiciled and resi-
dent at San Mateo, in the State of California, and
that each of the defendants above named were at all
times hereinafter stated domestic corporations, or-
ganized and existing under and by virtue of the laws
of the Territory, now State of Arizona, and having

their principal places for the regular transaction of business in the city of Phoenix, in said State, and that the matter in controversy in the above-entitled cause arose between citizens of different states as aforesaid, namely: between the complainant as a citizen [39] of the State of California, and each of the defendants as corporate citizens of the State of Arizona, and such controversy was of a civil nature in equity where the matter in controversy exceeds, exclusive of interests and costs, the sum or value of Three Thousand (\$3,000.00) Dollars.

II.

That this Court's jurisdiction of this intervening petition, and of the said matters involved therein, is ancillary in nature and depends upon the pendency of the above-entitled cause and of the exclusive jurisdiction now exercised by this Honorable Court by and through its said receiver herein, over the *res* and subject matter involved in the above-entitled cause as hereinafter more fully set forth.

III.

At all times hereinafter mentioned, your petitioner, the Farmers and Merchants' Bank, Phoenix, above named, was a corporation duly organized and existing under and by virtue of the laws of the Territory, now State, of Arizona, and that your said petitioner maintained, until recently, its regular place of business in the city of Phoenix, in the State of Arizona, and was engaged in a general banking business at said place.

IV.

On or about July 15th, 1912, the above-entitled

cause was instituted in this court.

Said suit was brought by complainant as a stockholder in the defendant Arizona Mutual Savings and Loan Association, for the benefit of complainant, as such, and for the benefit of all others similarly situated, and that in and by said suit said complainant sought the appointment of a receiver of said defendant Loan Association, the marshalling of its assets, the winding up of its business and the distribution [40] of all of its assets and properties to whomsoever might lawfully be entitled thereto, and that the said cause was brought to set aside a transfer of each and all of the properties of the defendant Loan Association which had theretofore been made by said defendant to the defendant Trust Company, with full knowledge on the part of the defendant Trust Company of the illegality of the said transfer, and all the rights of the complainant above named in and to all of the properties of the defendant Loan Association and all the rights of other stockholders of the defendant Loan Association therein.

Your petitioner alleges that process was duly issued in said cause and jurisdiction over each of the defendants above named duly secured and obtained, and that the jurisdiction of this court so obtained over the defendants and the properties of said defendants was and is exclusive in character, and drew to this Court the exclusive right to hear and determine all matters necessarily relating to the subject matter of said controversy, and that such proceedings were had in the above-entitled cause. That on or about August 6th, 1912, this learned Court, pre-

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sided over by the Honorable William M. Morrow, Circuit Judge for this Circuit, sitting at San Francisco, in the State of California, ordered the appointment of a receiver of both the defendants above named upon the terms then set forth in said order. Thereafter, and on or about September 11th, 1912, George D. Christy was appointed receiver of a portion of the assets of the defendant Loan Association by the Honorable Richard E. Sloan, Judge of the District Court of the District aforesaid, and that thereafter, and on or about November 16th, 1912, said receivership was enlarged and extended to and over all of the assets and properties of every kind and nature then and there belonging to the defendant Loan Association, and that still later, and on or about February 1st, 1913, Sims Ely was appointed temporary [41] receiver by this Honorable Court of all the assets and properties of the defendant Trust Company.

On or about February 27th, 1913, this cause came on for trial before the above-entitled court and was tried and resulted in a final decree in favor of the persons who had prior thereto duly intervened in the above-entitled cause, which persons aggregated approximately ninety persons in number and who were designated and described as interveners Nos. 1, 2, 3, and 4. In and by the terms of said final decree of February 27th, 1913, said Sims Ely, Esq., was duly appointed permanent receiver of both the defendants above named, since which time the said receiver has continued to and now is acting as the duly qualified and authorized permanent receiver

of each of the defendants above named, and as such is in physical possession of all of the assets and properties of the defendant Trust Company thus far obtainable by said receiver.

In and by the terms of the said final decree herein, it was adjudged and determined, among other things, that each of the interveners then of record in said cause and described in intervening petitions filed herein and designated as Nos. 1, 2, 3, and 4, as well as each and all of the stockholders of the defendant Loan Association who then and there remained as stockholders in said Loan Association and who had not, in any way, exchanged their stock therein for stock in the defendant Trust Company, and had not otherwise impaired their status as stockholders in said Loan Association, were entitled to and had a lien for the respective amounts heretofore paid in to the said defendants by the said persons last described as fixed by said decree, and the said Sims Ely, as permanent receiver for the defendants above named, was directed, among other things, to sell so much of the properties of the defendants above named as might be necessary to enable him to satisfy, pay and discharge the said liens so established and fixed by the terms of the said final decree of [42] February 27th, 1913, and to pay the surplus, if any thereafter remaining, to the defendant Trust Company for the benefit of those lawfully entitled thereto.

Your petitioner further alleges that the approximate value of the estate of the defendants above named then in the custody and possession of this

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Court through its said permanent receiver was in the neighborhood of Seventy Thousand (\$70,000.00) Dollars, and that the approximate amount of the liens so established and fixed by the terms of the said final decree herein, amounted to about the sum of Fifty Thousand (\$50,000.00) Dollars. And your petitioner alleges that after the payment of the said liens so established and fixed by the terms of the said final decree, as directed therein, there will be a surplus due and payable to the defendant Trust Company above named under and by virtue of said final decree.

V.

Your petitioner further alleges that the defendant Trust Company is and at all times hereinafter mentioned, has been, wholly insolvent and unable to meet and discharge its obligations to its creditors.

VI.

Heretofore, and on or about July 12th, 1913, your said petitioner obtained a judgment, a certified copy of which is hereto annexed and made a part hereof, against the defendant, Arizona Trust Company. The said judgment was recovered by your said petitioner in the Superior Court of the State of Arizona, in and for the County of Maricopa, in a cause then pending in said court wherein your petitioner was plaintiff and the defendant Trust Company above named was defendant, and that the said judgment is for a sum of money only in the amount of Eighteen Thousand Five Hundred (\$18,500.00) Dollars, with interest thereon from April 5th, 1912, until paid, and said judgment declares and establishes [43]

the said sum of Eighteen Thousand Five Hundred (\$18,500.00) Dollars, with interest thereon as aforesaid, as the sum now justly due and owing from the defendant Trust Company above named to your petitioner herein. Your petitioner further alleges that at the time of entry of the said judgment in the said Superior Court, the said permanent receiver of each of the defendants above named was then and there in full and exclusive possession of all of the properties of the defendant Trust Company above named, and that by reason of this fact and of the matters herein set forth, your petitioner could not, without a contempt of this Honorable Court, issue execution upon its said judgment against the defendant above named, or do any other act for the purpose of satisfying its said judgment out of the properties of the defendant Trust Company above named, or any part thereof, and because of the matters herein set forth, no execution was, in fact, issued upon your petitioner's said judgment, and that the reason why no such execution issued upon said judgment was because of the matters herein set forth and also because a conflict of jurisdiction might and would have resulted between the said Superior Court of the State of Arizona in and for the County of Maricopa and this Honorable Court if the said execution had issued and a levy thereunder had been made or attempted.

And your petitioner further alleges that it is remediless in the premises and can do nothing to collect its said judgment except by and with the consent and approval of this Honorable Court. And your

petitioner further alleges that by reason of the present limited scope of the receivership of the defendant Trust Company, as described by the terms of the said final decree herein of February 27th, 1913, to which your petitioner begs leave to refer as though set forth at length herein, the said receivership should, in justice to your petitioner herein and for its benefit and for the benefit of other judgment creditors of the [44] defendant Trust Company above named as may be similarly situated, and for the benefit of all those having or claiming to have rights and claims against the said defendant Trust Company, this Honorable Court should extend the said present receivership to your petitioner's said judgment and to the rights of the others herein last described to the end that the rights, claims and priorities of each and all of the persons having or claiming to have claims against the defendant above named may be ascertained and determined according to law.

VII.

And your petitioner further alleges that in addition to the assets now in the hands of the said receiver, assets and property belonging to the defendant Trust Company to the extent of many thousands of dollars should be recovered of and from the former officers and directors of the said defendant Trust Company, among others particularly from one A. J. Edwards, W. T. Smith and John T. Dunlap, and to the end that the insolvent estate of the said defendant Trust Company may thereby be increased for the benefit of your said petitioner and

others similarly situated, your petitioner alleges that the liability of each of the persons last named to account to the said defendant Trust Company or to the receiver thereof heretofore duly appointed by this Honorable Court consists and arises out of the following matters, namely:

VIII.

On information and belief, your petitioner alleges that at all times hereinafter mentioned in this paragraph, one A. J. Edwards was an officer and director of the defendant Trust Company, and at all such times occupied a position of trust and confidence towards the said defendant Trust Company and towards its creditors and stockholders. That during all of said period, the said A. J. Edwards was in complete control and had the management of the said defendant Trust Company and in the exercise of his [45] duties as an officer and director and as manager of the defendant Trust Company, completely dominated and controlled the policy of the defendant Trust Company and all of its internal operations and business. That between June 2d, 1911, and June 21st, 1912, the said A. J. Edwards, while acting as aforesaid, drew from the funds of the defendant Trust Company and improperly disbursed sums aggregating Fourteen Thousand Five Hundred Twenty-two and Sixty-eight One-hundredths (\$14,522.68) Dollars. That much of these funds, and substantial amounts thereof, the exact amounts of which are unknown to your petitioner, were, in reality, received by the said A. J. Edwards individually and applied and converted to his own

personal use, for which the said Edwards has never accounted to the said defendant Trust Company, and for which he should be required forthwith to account. That in addition to the said sum of Fourteen Thousand Five Hundred Twenty-two and Sixty-eight One-hundredths (\$14,522.68) Dollars, for which the said A. J. Edwards should account, the said A. J. Edwards should be required to account for delivering to one Kline about Seven Thousand (\$7,000.00) Dollars worth of securities then and there belonging to the defendant Loan Association and for delivering to one Alice U. Solomon, securities of the defendant Loan Association of the approximate value of Forty-five Hundred (\$4,500.00) Dollars. And as to the said transactions with the said Kline and Solomon, your petitioner alleges that between the dates stated, the said Kline and the said Solomon were each stockholders in the defendant Loan Association, each being in a position substantially similar to the complainant above named and to other stockholders in the defendant Loan Association, and as such, not entitled to any priority or preference in the distribution of the assets of the defendant Loan Association over and above other stockholders similarly situated. That notwithstanding said fact, and notwithstanding the fact that the said [46] Edwards then and there well knew that the defendant Loan Association and the said defendant Trust Company were then and there wholly insolvent and unable to pay and discharge in full the obligations of each of said companies to their respective creditors and stockholders, the said Edwards, without any

right or authority so to do, and without any lawful consideration to the said defendant Loan Association or defendant Trust Company, voluntarily delivered to the said Kline and to the said Solomon the securities of the defendant Loan Association as hereinbefore stated, and that at the present time, as your petitioner is informed and verily believes, the said Kline is still in possession of the said securities so delivered to him by the said Edwards as aforesaid, and that although the securities so delivered to the said Solomon by the said Edwards as aforesaid are now the subject of a replevin suit wherein the receiver of the defendants above named is plaintiff and the said Alice U. Solomon, defendant, is still pending undetermined before this Honorable Court, the said A. J. Edwards is accountable to the defendant Trust Company and should be made to repay to it or to the receiver thereof each and all of the sums of money so lost to the said defendant Trust Company by reason of the said unlawful and improper acts of the said Edwards while acting as an officer and director thereof. And in addition to the matters herein set forth and between the dates last mentioned, the said A. J. Edwards negotiated a loan for the alleged benefit of the said defendant Trust Company from the Valley Bank, a corporation organized and existing under and by virtue of the laws of the Territory, now State, of Arizona, and having its principal place of business in the city of Phoenix, in said State. That the said loan, as your petitioner is informed and verily believes, approximated Six Thousand (\$6,000.00) Dollars in amount, and as al-

leged security for the repayment of the said loan of Six Thousand (\$6,000.00) Dollars to the said Valley Bank by the [47] Arizona Trust Company, the said A. J. Edwards caused to be deposited with the said Valley Bank securities then and there the exclusive property of the defendant Loan Association, and in which the defendant Trust Company had no right, title or interest of any kind or character. Upon information and belief, that the said Valley Bank then and there so received the said securities and continued to hold the same as alleged security for the repayment to it by the defendant Trust Company of the said loan of Six Thousand (\$6,000.00) Dollars, but your petitioner alleges, upon information and belief, that the said Valley Bank then and thereafter, and at all times, had full and complete knowledge and notice of the fact that the said securities were not then the property of the defendant Loan Association, and upon information and belief, your petitioner alleges the fact to be that the said Valley Bank accepted and received the said securities, charged with knowledge and notice of the transactions theretofore had between the said defendants Arizona Mutual Savings and Loan Association and the Arizona Trust Company, and that the said Valley Bank did not then, nor did it thereafter acquire a valid lien upon said securities, or any of them, as against or superior to the rights created and now existing in favor of your said petitioner under and by virtue of the said judgment obtained by your said petitioner against the said defendant Trust Company on July 12th, 1913, And

that such claim as the said Valley Bank has for the return of its Six Thousand (\$6,000.00) Dollars is exclusively an unsecured claim against the defendant Trust Company, and that the receiver of the said defendant Trust Company should take such proceedings as may be proper for the recovery of said securities now in possession of the said Valley Bank, to the end that the said claim of the Valley Bank against the said Trust Company may be paid out of the general assets of the defendant Trust Company, and not [48] satisfied out of the securities so delivered to the said Valley Bank as aforesaid to the detriment of your said petitioner and other judgment creditors of the said defendant Trust Company, or in the alternative that such action may be taken by the receiver herein for the protection of the equity in the said securities now in the possession of the said Valley Bank as to the Court may seem right and proper.

IX.

On information and belief, your petitioner further alleges that on or about June 21st, 1912, one W. T. Smith and John T. Dunlap acquired all of the alleged common stock in the defendant Trust Company, theretofore claimed to be owned by the said A. J. Edwards, and that by virtue of the acquisition of said stock from and after June 21st, 1912, the said W. T. Smith and the said John T. Dunlap immediately assumed full and complete charge and control and management of all the properties, assets and affairs of the said defendant Trust Company, and thereafter, and until in or about the month of De-

cember, 1912, continuously exercised complete dominion and control over the assets and properties of the said defendant Trust Company and of all of its said affairs, as officers and directors thereof. That during said period, the said W. T. Smith and the said John T. Dunlap occupied a position of trust and confidence towards the defendant Trust Company and towards its stockholders and creditors, and were officers and directors of the said defendant Trust Company. That notwithstanding the position of trust and confidence so occupied by the said Smith and Dunlap with reference to the defendant Trust Company, its creditors and stockholders, your petitioner alleges, upon information and belief, that the said Smith and Dunlap violated their duties as officers and directors of the said defendant Trust Company and managed the affairs of the said defendant Trust Company exclusively for their own benefit instead of for the benefit [49] of the stockholders thereof and the creditors of said defendant Trust Company.

That in so doing the said Smith and Dunlap, in wilful disregard and violation of their said duties as officers and directors of the said insolvent Trust Company, made unlawful and inequitable disposition of the assets and properties then claimed to be owned by the said defendant Trust Company, and so disposed of many thousands of dollars of assets and properties of the said defendant Trust Company, without any lawful right or authority so to do, the exact amount of which is unknown to your petitioner.

Among the wrongful and unauthorized and unlawful dispositions of the properties of the defendant Trust Company, so made by said Smith and Dunlap, as hereinbefore set forth, your petitioner alleges, upon information and belief, that the said Smith and Dunlap, during the period aforesaid, made the following so-called "ledger settlement," namely:

(a) During the period aforesaid, one C. W. Quinn was and had been a stockholder in the defendant Loan Association, and was then and there indebted to the defendant Loan Association or to the defendant Trust Company for money theretofore loaned to the said C. W. Quinn by one of said defendants, in the neighborhood of Seven Hundred Twenty-one and Fifty One-hundredths (\$721.50) Dollars, but notwithstanding the fact that both the said defendants were then and there insolvent, as aforesaid, and the stock therein then owned by the said C. W. Quinn was not of the value of the said sum of Seven Hundred Twenty-one and Fifty One-hundredths (\$721.50) Dollars, the said Smith and Dunlap nevertheless, in violation of their duties as aforesaid, and contrary to the interests of your petitioner as a creditor of the defendant Trust Company, accepted an assignment of all of such stock as the said C. W. Quinn then owned in one or both of the defendant companies, and in exchange for said assignment, purported [50] to cancel and discharge the indebtedness of the said C. W. Quinn in favor of the said defendants above named for the sum of Seven Hundred Twenty-one and Fifty One-hundredths (\$721.50) Dollars, which transaction resulted in a

loss to the said defendants above named, by reason of the conduct of the said Smith and Dunlap, of approximately Seven Hundred Twenty-one and Fifty One-hundredths (\$721.50) Dollars.

(b) That during the period aforesaid, one R. W. Moyne was and had been a stockholder in the defendant Loan Association, and was then and there indebted to the defendant Loan Association or to the defendant Trust Company for money theretofore loaned to the said R. W. Moyne by one of said defendants, in the neighborhood of Seven Hundred Ninety-seven and Forty-five One-hundredths (\$797.45) Dollars, but notwithstanding the fact that both the said defendants were then and there insolvent, as aforesaid, and the stock therein then owned by the said R. W. Moyne was not of the value of the said sum of Seven Hundred Ninety-seven and Forty-five One-hundredths (\$797.45) Dollars, and notwithstanding the further fact that the said R. W. Moyne was then and there financially able to pay and discharge his said indebtedness to the said defendants above named, the said Smith and Dunlap, nevertheless, in violation of their duties as aforesaid, and contrary to the interests of your petitioner as a creditor of the defendant Trust Company, accepted an assignment of all of such stock as the said R. W. Moyne then owned in one or both of the defendant companies, and in exchange for said assignment, purported to cancel and discharge the indebtedness of the said R. W. Moyne in favor of the said defendants above named for the sum of Seven Hundred Ninety-seven and Forty-five One-hundredths

(\$797.45) Dollars, which transaction resulted in a loss to the said defendants above named, by reason of the conduct of the said Smith and Dunlap, of approximately Seven Hundred Ninety-seven and Forty-five One-hundredths [51] (\$797.45) Dollars.

(c) That during the period aforesaid, one J. J. Murphy was and had been a stockholder in the defendant Loan Association, and was then and there indebted to the defendant Loan Association or to the defendant Trust Company for money theretofore loaned to the said J. J. Murphy by one of said defendants, in the neighborhood of Six Hundred Seven (\$607.00) Dollars, but notwithstanding the fact that both the said defendants were then and there insolvent, as aforesaid, and the stock therein then owned by the said J. J. Murphy was not of the value of the said sum of Six Hundred and Seven (\$607.00) Dollars, and notwithstanding the further fact that the said J. J. Murphy was then and there financially able to pay and discharge his said indebtedness to the said defendants above named, the said Smith and Dunlap, nevertheless, in violation of their duties as aforesaid, and contrary to the interests of your petitioner as a creditor of the defendant Trust Company, accepted an assignment of all of such stock as the said J. J. Murphy then owned in one or both of the defendant companies, and in exchange for said assignment, purported to cancel and discharge the indebtedness of the said J. J. Murphy in favor of the said defendants above named for the sum of Six Hundred and Seven (\$607.00) Dollars, which

transaction resulted in a loss to the said defendants above named, by reason of the conduct of the said Smith and Dunlap, of approximately Six Hundred and Seven (\$607.00) Dollars.

(d) That during the period aforesaid, one E. M. Claybridge was and had been a stockholder in the defendant Loan Association, and was then and there indebted to the defendant Loan Association or to the defendant Trust Company for money theretofore loaned to the said E. M. Claybridge by one of the said defendants, in the neighborhood of Nine Hundred (\$900.00) Dollars, but notwithstanding the fact that both the said defendants were then [52] and there insolvent, as aforesaid, and the stock therein then owned by the said E. M. Claybridge was not of the value of the said sum of Nine Hundred (\$900.00) Dollars, and notwithstanding the further fact that the said E. M. Claybridge was then and there financially able to pay and discharge his said indebtedness to the said defendants above named, the said Smith and Dunlap, nevertheless, in violation of their duties as aforesaid, and contrary to the interests of your petitioner as a creditor of the defendant Trust Company accepted an assignment of all of such stock as the said E. M. Claybridge then owned in one or both of the defendant companies, and in exchange for said assignment, purported to cancel and discharge the indebtedness of the said E. M. Claybridge in favor of the said defendants above named for the sum of Nine Hundred (\$900.00) Dollars, which transaction resulted in a loss to the said defendants above named, by reason

of the conduct of the said Smith and Dunlap, of approximately Nine Hundred (\$900.00) Dollars.

(e) That during the period aforesaid, one George S. Rogers was and had been a stockholder in the defendant Loan Association, and was then and there indebted to the defendant Loan Association or the defendant Trust Company for money theretofore loaned to the said George S. Rogers by one of the said defendants, in the neighborhood of Two Hundred Fifty-five (\$255.00) Dollars, but notwithstanding the fact that both the said defendants were then and there insolvent, as aforesaid, and the stock therein then owned by the said George S. Rogers was not of the value of the said sum of Two Hundred Fifty-five (\$255.00) Dollars, and notwithstanding the further fact that the said George S. Rogers was then and there financially able to pay and discharge his said indebtedness to the said defendant above named, the said Smith and Dunlap, nevertheless, in violation of their duties as aforesaid, and contrary to the interests of your petitioner as a [53] creditor of the defendant Trust Company, accepted an assignment of all of such stock as the said George S. Rogers then owned in one or both of the defendant companies, and in exchange for said assignment, purported to cancel and discharge the indebtedness of the said George S. Rogers in favor of the said defendants above named for the sum of Two Hundred Fifty-five (\$255.00) Dollars, which transaction resulted in a loss to the said defendants above named, by reason of the conduct of the said Smith and Dun-

lap, of approximately Two Hundred Fifty-five (\$255.00) Dollars.

(f) That during the period aforesaid, one Isaac Rogers was and had been a stockholder in the defendant Loan Association, and was then and there indebted to the defendant Loan Association or to the defendant Trust Company for money theretofore loaned to the said Isaac Rogers by one of the said defendants, in the neighborhood of Four Hundred Seventy-six (\$476.00) Dollars, but notwithstanding the fact that both the said defendants were then and there insolvent, as aforesaid, and the stock therein then owned by the said Isaac Rogers was not of the value of the said sum of Four Hundred Seventy-six (\$476.00) Dollars, and notwithstanding the further fact that the said Isaac Rogers was then and there financially able to pay and discharge his said indebtedness to the said defendants above named, the said Smith and Dunlap, nevertheless, in violation of their duties as aforesaid, and contrary to the interests of your petitioner as a creditor of the defendant Trust Company, accepted an assignment of all of such stock as the said Isaac Rogers then owned in one or both of the defendant companies, and in exchange for said assignment, purported to cancel and discharge the indebtedness of the said Isaac Rogers in favor of the said defendants above named for the sum of Four Hundred Seventy-six (\$476.00) Dollars, which transaction resulted in a loss to the said defendants above named, by reason of the conduct of the said Smith and Dunlap, of

approximately Four [54] Hundred Seventy-six (\$476.00) Dollars.

(g) That during the period aforesaid, one A. Williams was and had been a stockholder in the defendant Loan Association, and was then and there indebted to the defendant Loan Association, *and was then and there indebted to the defendant Loan Association*, or to the defendant Trust Company for money theretofore loaned to the said A. Williams by one of the said defendants, in the neighborhood of Six Hundred Seventy-eight and Seventy-two One-hundredths (\$678.72) Dollars, but notwithstanding the fact that both the said defendants were then and there insolvent, as aforesaid, and the stock therein then owned by the said A. Williams was not of the value of the said sum of Six Hundred Seventy-eight and Seventy-two One-hundredths (\$678.72) Dollars, and notwithstanding the further fact that the said A. Williams was then and there financially able to pay and discharge his said indebtedness to the said defendants above named, the said Smith and Dunlap, nevertheless, in violation of their duties as aforesaid, and contrary to the interests of your petitioner as a creditor of the defendant Trust Company, accepted an assignment of all of such stock as the said A. Williams then owned in one or both of the defendant companies, and in exchange for said assignment, purported to cancel and discharge the indebtedness of the said A. Williams in favor of the said defendants above named for the sum of Six Hundred Seventy-eight and Seventy-two One-hundredths (\$678.72) Dollars, which transaction re-

sulted in the loss to the said defendants above named, by reason of the conduct of the said Smith and Dunlap, of approximately Six Hundred Seventy-eight and Seventy-two One-hundredths (\$678.72) Dollars.

X.

That in addition to the matters herein set forth, the said Smith and Dunlap so conducted themselves during the period aforesaid as officers and directors of the defendant Trust Company that they, without any right or authority so to do, and without [55] receiving any consideration therefor for the benefit of the defendant Trust Company, unlawfully disposed of an equity which the defendant Trust Company then and there had and possessed in certain land situated in Section 8, at Mesa, Arizona, and purported to transfer the said equity of the defendant Trust Company to one Alfred LeBaron in alleged settlement, or partial settlement, of some claim which the said LeBaron then and there asserted against the defendant Trust Company, but your petitioner alleges, upon information and belief, that the defendant Trust Company never, at any time, received any consideration from the said LeBaron for its said equity in said property, and that the reasonable value of said equity was Three Thousand Seven Hundred Sixty-six (\$3,766) Dollars, which said sum, by reason of the misconduct of the said Smith and Dunlap, as aforesaid, was wholly lost to the defendant Trust Company above named.

XI.

That in addition to the matters herein above set

forth, your petitioner alleges, on information and belief, that by reason of the culpable, wilful and gross neglect and mismanagement of the affairs of the defendant company by the said Smith and Dunlap, the said defendant Trust Company suffered and sustained great losses in connection with the following pieces of property:

(a) At and during the times aforesaid, the defendant Trust Company was the equitable owner under a contract to purchase of approximately one hundred sixty acres of land north of the city of Phoenix, known and described as the Evans Tract. That during the period aforesaid, the said Smith and Dunlap claimed that the defendant Trust Company owned an equity over and above existing encumbrances upon said premises of the value of about Thirty-six Thousand (\$36,000.00) Dollars, but that notwithstanding the said alleged equity in the said premises in favor of the defendant [56] Trust Company, and notwithstanding the fact that the defendant Trust Company did then and there have a substantial equity in the said premises, the exact value of which equity is unknown to your said petitioner, by reason of the improper use of the funds of the defendant Trust Company as heretofore alleged, and because of the misconduct of the said Smith and Dunlap with reference thereto, the said Smith and Dunlap suffered and permitted the former owner of the said Evans Tract, who then and there held a substantial mortgage on said premises, the exact amount of which is unknown to your petitioner, to foreclose the same, and by reason of said

foreclosure and of the failure of the said Smith and Dunlap and of the defendant to protect the said property against such foreclosure, all of the equity of the said defendant Trust Company in and to said tract was lost. And that the loss sustained by the said defendant Trust Company, by reason of the said acts of the said Smith and Dunlap, and their failure properly to protect the said property from foreclosure, amounted to many thousands of dollars, the exact amount of which is unknown to your petitioner, but as your petitioner is informed and verily believes, the said amount does not exceed the sum of Thirty-six Thousand (\$36,000.00) Dollars.

(b) At and during the times aforesaid, the defendant Trust Company was the equitable owner under a contract to purchase of Lot 2, in Block 80 in the City of Phoenix. That during the period aforesaid, the said Smith and Dunlap claimed that the defendant Trust Company owned an equity over and above existing encumbrances upon said premises of the value of about Thirty-seven Thousand (\$37,000.00) Dollars, but that notwithstanding the said alleged equity in the said premises in favor of the defendant Trust Company, and notwithstanding the fact that the defendant Trust Company did then and there have a substantial equity in the said premises, the exact value of which equity is unknown to your [57] said petitioner, by reason of the improper use of the funds of the defendant Trust Company as heretofore alleged, and because of the misconduct of the said Smith and Dunlap with reference thereto, the rights of the defendant Trust Company of, in

and to said premises known as Lot 2, in Block 80 in the City of Phoenix, were rendered subject to forfeiture under and by virtue of the terms of the contract to purchase relating to said property. That approximately Seventy-five Hundred (\$7,500.00) Dollars of the defendant Trust Company's money had been paid to the owner of the said premises, known as Lot 2, in Block 80, in the said City of Phoenix, on account of the purchase price thereof, and that the sum of only about Eight Thousand (\$8,000.00) Dollars in addition thereto was required to be paid upon said contract, which payment, if made, would have entitled the defendant Trust Company to a conveyance of the said premises last described, subject only to a mortgage of approximately Thirty-five Thousand (\$35,000.00) Dollars. That the purchase price of the said premises to the defendant Trust Company was approximately Fifty Thousand (\$50,000.00) Dollars, but that notwithstanding said purchase price, the said Smith and Dunlap claimed the value of said property to be in the neighborhood of Seventy or Eighty Thousand Dollars, and during the period aforesaid, and while the said Smith and Dunlap were in complete control of the affairs of the defendant Trust Company, the said Smith and Dunlap caused statements to be made concerning the value of the said property last described as an asset to the defendant Trust Company, which place the value thereof at the sum of Eighty Thousand (\$80,000.00) Dollars, and place the value of the equity therein in favor of the defendant Trust Company at Thirty-seven Thousand (\$37,000.00) Dollars.

That notwithstanding the great value of the said property, the rights of the defendant Trust Company therein were, as your petitioner is informed and believes, rendered subject to forfeiture, as aforesaid, and thereafter [58] were forfeited and lost to the defendant Trust Company solely by reason of the misconduct of the said Smith and Dunlap and shortly after the said defendant Trust Company had lost all its rights under the said contract to purchase the said Lot 2 in Block 80, in the said City of Phoenix, the receiver of the defendant Trust Company was able to, and did sell his alleged equity of redemption in the said premises, or such rights as he had in connection therewith, if any, for the sum of One Thousand (\$1,000.00) Dollars, and thereafter the said premises were resold by the owner thereof for approximately the sum of Sixty Thousand (\$60,000.00) Dollars, so that your petitioner is informed and verily believes, and so alleges the fact to be, that by reason of the matters herein set forth with reference to Lot 2, in Block 80, in the said City of Phoenix, the said acts of the said Smith and Dunlap caused a loss to the said defendant Trust Company of not more than Thirty-six Thousand (\$36,000.00) Dollars, nor less than Nine Thousand (\$9,000.00) Dollars.

(c) Your petitioner further alleges, on information and belief, that during the period aforesaid, the said defendant Trust Company was the equitable owner, through ownership of stock in the Phoenix Building and Realty Company, of certain premises near the City of Phoenix, known as the Willow

Addition. That said premises were reasonably worth the sum of about Thirty-two Thousand (\$32,000.00) Dollars, but that said premises were then and there subject to a mortgage of Seventeen Thousand (\$17,000.00) Dollars, and that the defendant Trust Company had advanced or expended in connection therewith about Ten Thousand (\$10,000.00) Dollars. That shortly prior to the retirement of the said Smith and Dunlap from the control of the affairs of the defendant Trust Company in or about the month of December, 1912, there was due, or about to become due and owing on account of the said mortgage on the said premises known as the said Willow Addition, a [59] payment of about Three Thousand (\$3,000.00) Dollars, but that by reason of the misconduct of the said Smith and Dunlap, and the improper use and expenditure of the funds of the defendant Trust Company as aforesaid, the said Smith and Dunlap wholly failed and neglected to make the said payment, and by reason of the involved and complicated condition of the title of the said premises known as the said Willow Addition, and because of the involved condition of the affairs of both of the defendant companies, resulting from the acts of the said Smith and Dunlap in connection therewith, when the said Sims Ely, as permanent receiver of the defendants above named, took possession of the premises above set forth, he was unable to dispose of the said premises to anybody except the said Smith and Dunlap and their associates, and that the said receiver was obliged to and did sell all of the right, title and interest of the de-

fendant companies in and to said Willow Addition to one J. Wesley Walker, an associate of the said Smith and Dunlap, as more fully set forth herein, and that while the price received by the said receiver from the said Walker for the interest of the defendant Trust Companies in and to said Willow Addition was and is, as your petitioner is informed and verily believes, a fair and reasonable price therefor under the circumstances relating thereto, nevertheless your petitioner alleges the fact to be, on information and belief, that because of the misconduct of the said Smith and Dunlap in failing properly to protect the interests of the defendant Trust Company in and to the said property known as the said Willow Addition, the said defendant Trust Company had lost at least the sum of Ten Thousand (\$10,000.00) Dollars which it had theretofore advanced on account of the said properties, and the difference between said sum of Ten Thousand (\$10,000.00) Dollars, plus the mortgage of Seventeen Thousand (\$17,000.00) Dollars thereon, and the reasonable value of the said premises, to wit: the sum of about Thirty-two Thousand (\$32,000.00) Dollars, for all [60] of which your petitioner alleges, on information and belief, the said Smith and Dunlap should be required to account.

XII.

On information and belief, your petitioner alleges the fact to be that at all times between June 20th, 1912, and sometime, the exact date of which is unknown to your petitioner, in and about the month of December, 1912, and thereafter, one J. Wesley Walker was the secret partner and associate of the

said W. T. Smith and the said John T. Dunlap in and about all of the matters relating to the affairs of the defendant Trust Company and the conduct thereof by the said Smith and Dunlap, and upon information and belief, that the said J. Wesley Walker shared and participated in the profits of the said Smith and Dunlap made in connection with the dealings of the said Smith and Dunlap in connection with the properties of the defendant Trust Company, and had agreed to share in such, if any, losses as the said Smith and Dunlap sustained with reference to any of the properties of the defendant Trust Company, and that by reason of the matters herein set forth, the said J. Wesley Walker should be required to account for such secret profits, if any, as he has secured and derived from his said secret partnership with the said Smith and Dunlap relating to the affairs of the said defendant Trust Company.

XIII.

Your petitioner further alleges, upon information and belief, that there are a large number of stockholders of the defendant Trust Company who are indebted to the defendant Trust Company for the unpaid purchase price and subscription to the stock of the defendant Trust Company, and to the end that the funds in the hands of this Court with which to pay and discharge the debts of the defendant Trust Company to its lawful creditors may be increased in value, the said stockholders of the said defendant [61] Trust Company so indebted to it as aforesaid, should be required to pay in full their said subscriptions to the receiver of the defendant Trust

Company above named.

XIV.

And your petitioner further alleges that it has not, and that other creditors of the defendant Trust Company similarly situated have not any other adequate remedy at law or otherwise for the protection of the rights of your said petitioner and others similarly situated except as prayed for herein.

IN CONSIDERATION WHEREOF, and forasmuch as your petitioner is remediless in the premises at and by the strict rules of the common law, and is only relievable in a court of equity, and in this court where matters of this kind are properly cognizable and relievable, your petitioner therefore respectfully prays:

1st. That the receivership heretofore and now existing over the properties and assets of the defendant Trust Company be extended to the judgment of your said petitioner so obtained as aforesaid in the Superior Court of the State of Arizona. in and for the County of Maricopa, not only for the benefit of your said petitioner, but for the benefit of all other judgment creditors of the defendant Trust Company and for the benefit of all those having claims of any kind or character against the defendant above named.

2d. And to the end that full and complete justice and equity may be done between all of the parties hereto, and inasmuch as this Honorable Court, in the exercise of its jurisdiction over the properties of the above-named defendant Trust Company has been obliged to and has taken physical possession thereof, and is now engaged in disposing of said assets for the

purpose of discharging and paying the liens established and fixed by the [62] terms of the final decree of February 27th, 1913, herein, for the benefit of those named therein, and under the well settled rules of practice of this Honorable Court, and in accordance with equity in such cases that where the Court assumes jurisdiction of the matters of any controversy for one purpose, such jurisdiction will be extended and exercised by such Court for all purposes, and to the further end that by so extending the receivership aforesaid as prayed for herein, the rights of all persons and parties having claims against said defendant Trust Company may be ascertained, adjudged and determined herein, and a multiplicity of suits against the defendant Trust Company may thereby be avoided, your petitioner further prays that a master be forthwith appointed by this Honorable Court before whom all claimants may present their claims against the defendant Trust Company, and that notice to each and all of said persons be duly given, according to law, by said master, together with notice that unless all of said claimants present their claims to the said master before a day certain therein to be named, that the rights of each and all of said claimants touching and concerning the properties of the defendant Trust Company above named, may be barred and foreclosed, and that the various priorities of each and all of the persons asserting claims against the defendant Trust Company may be ascertained, adjudged and determined, and that all of the assets and properties of the defendant Trust Company may be marshalled and distributed

to those found to be lawfully entitled thereto, and the affairs of said defendant wound up and finally settled.

3d. And your petitioner further prays that it be adjudged and decreed to be entitled to a preference and priority over and above all other creditors upon all the assets of the defendant Trust Company left and remaining after the payment, discharge and satisfaction of each and all of the liens established [63] and fixed by the terms of the final decree of February 27th, 1913, herein, because of the facts hereinbefore set forth, because of the recovery of its said judgment and because of the diligence of your said petitioner in bringing the matters herein set forth to the attention of this Honorable Court, not only for the benefit of your said petitioner, but also for the benefit of all others similarly situated, and for such other reasons as may duly appear to the Court upon taking proof of the matters herein set forth.

4th. And may it please your Honor to grant unto your said petitioner a Writ of Subpoena of the United States of America, issued out of and under the seal of this Honorable Court, directed to the said A. J. Edwards, the said W. T. Smith, the said John T. Dunlap and the said J. Wesley Walker, and each of them, then and there commanding each of said persons last named, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court then and there to answer (but not under oath, an answer under oath being expressly waived) all and singular the prem-

ises herein set forth, and to stand to, perform and abide by such order, direction and decree as may be made against them and each of them in the premises as shall seem meet and agreeable to equity and good conscience.

5th. And your petitioner further prays that the said A. J. Edwards, the said W. T. Smith, the said John T. Dunlap and the said J. Wesley Walker, and each of them, be required to make and render to this Honorable Court a full account of their dealings, and of the dealings of each of them, with the affairs and properties of the said defendant Trust Company, and that they, and each of them, be required to make full discovery of and concerning each and all of the acts of each of the said persons last named relating to the matters herein set forth.

6th. And your petitioner further prays that without waiving the right which it respectfully claims and asserts to file [64] this intervening petition herein without leave of this Honorable Court to the end that doubt and confusion concerning the right of your said petitioner thus to intervene may thereby be avoided that consent and leave of this Honorable Court authorizing and permitting your said petitioner to file the foregoing petition herein be granted.

7th. And that your petitioner have such other further and different relief in the premises as to the Court may seem right and proper and for general relief in the premises, and for its costs and expenses herein incurred.

And your said petitioner, as in duty bound, will ever pray.

(Signed) PAUL RENAU INGLES.

PAUL RENAU INGLES,
Solicitor for Petitioner, Farmers and Merchants'
Bank, Phoenix, Fleming Building, Phoenix,
Arizona. [65]

United States of America,
District of Arizona,
State of Arizona,
County of Maricopa,—ss.

J. P. Ivy, being duly sworn, deposes and says: I am the president of the petitioner, the Farmers and Merchants' Bank, Phoenix, above named. I have heard read the foregoing petition and know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

(Signed) J. P. IVY.

Sworn to before me, this 29th day of July, 1913.

[Notarial Seal]

(Signed) B. L. RUDDEROW,
Notary Public.

My commission expires Sept. 26, 1916. [66]

*In the Superior Court of the State of Arizona, in and
for the County of Maricopa.*

FARMERS AND MERCHANTS' BANK, PHOE-
NIX,

Plaintiff,

vs.

ARIZONA TRUST COMPANY,

Defendant.

**Judgment [of Superior Court in Farmers and Mer-
chants' Bank, Phoenix, vs. Arizona Trust Co.].**

This cause came on regularly for hearing on July 9th, 1913, before the Court, sitting without a jury, a trial by jury having been previously expressly waived by the respective parties to said action.

The plaintiff appearing by Paul Renau Ingles, its attorney, and the defendant by Clyde M. Gandy, its attorney.

Upon motion of attorney for plaintiff, Sims Ely, Receiver, of the defendant herein, heretofore appointed and acting as such in a suit in the United States District Court for the District of Arizona, being numbered ———, was made a party defendant herein.

By virtue of a certain stipulation of counsel for the parties to this action, which was heretofore made in open court, the testimony of the witnesses and the evidence presented to the Court and jury upon a former trial of this cause, was read by the Court upon this trial with the same force and effect as though given in open court.

Said Receiver having filed with this Court a copy of the final decree in said cause in said Federal Court on February 27th, 1913, upon motion of counsel for said Receiver, which motion was consented to by counsel for plaintiff herein, this action was dismissed as to said receiver. [67]

The argument of counsel for the respective parties thereupon being heard and the case being closed and submitted to the Court for its consideration, finding and decision, and the Court having considered the same and being fully advised in the premises, now on this 12th day of July, 1913, the Court finds for the plaintiff and against the defendant herein.

WHEREFORE, by reason of the premises and the law it is ORDERED, ADJUDGED AND DECREED, that Farmers and Merchants' Bank, Phoenix, plaintiff above named, have and recover of and from the Arizona Trust Company, the defendant above named, the sum of Eighteen Thousand Five Hundred Dollars (\$18,500.00), with legal interest thereon from April 5, 1912, until paid, together with the costs herein taxed at ——— Dollars.

Done in open court this 12th day of July, 1913.

(Signed) JOHN C. PHILLIPS,
Judge.

State of Arizona,
County of Maricopa,—ss.

I, Wm. E. Thomas, Clerk of the Superior Court of the State of Arizona, in and for Maricopa County, hereby certify that I have compared the foregoing copy with the original Judgment in the above-entitled action, filed in my office on the 19th day of

July, 1913, and that the same is a true copy of the original and of the whole thereof.

Witness my hand and the seal of said Court this 19th day of July, 1913.

[Court Seal]

WM. E. THOMAS,
Clerk.

By (Signed) L. D. Oldham,
Deputy Clerk. [68]

[Endorsements]: No. 53. In the District Court of the United States, for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association, and Arizona Trust Company, Defendants. Intervening Petition of Farmers and Merchants' Bank, Phoenix. Filed July 29, 1913, at — M. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy. Paul Renau Ingles, Solicitor for Petitioner, Fleming Building, Phoenix, Arizona. [69]

*In the District Court of the United States, District
of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSO-
CIATION and ARIZONA TRUST COM-
PANY,

Defendants.

**Motion of Farmers and Merchants' Bank, Phoenix,
Intervener, [to Extend Receivership (Filed
July 29, 1913)].**

Now comes the Farmers & Merchants' Bank of Phoenix, the intervener above named, and moves the Court to extend the receivership now existing in the above-entitled cause, under and by virtue of the final decree therein of February 27th, 1913, to the judgment heretofore on or about July 12th, 1913, obtained by said intervener in the Superior Court of Arizona, in the County of Maricopa, amounting to Eighteen Thousand Five Hundred (\$18,500) Dollars with interest, in a cause then pending in said court, wherein the said Farmers & Merchants' Bank of Phoenix was plaintiff, and the said Arizona Trust Company, was defendant, for the benefit of your said petitioner, and for the benefit of all other creditors of the defendant Trust Company similarly situated, and for the appointment of a Master to take proof of claims against the said defendant Trust Company, and for such other and further relief as the Court may deem proper. [70]

And notice is hereby given that said motion will be brought on for hearing before the Honorable William W. Morrow, Judge of the Circuit Court of Appeals, sitting at San Francisco, California, in the Federal building, in said city, on August 4th, 1913, at 10:00 o'clock on said day, or as soon thereafter as

counsel may be heard.

Yours, etc.

PAUL R. INGLES,

Solicitor for Farmers & Merchants' Bank, Intervener, Fleming Building, Phoenix, Arizona.

To Sims Ely, Esq., Receiver for the Defendant Arizona Mutual Savings & Loan Association, and Arizona Trust Company.

To Arizona Trust Company.

To William M. Seabury, Solicitor for Interveners Named in Final Decree:

[Endorsements]: Copy Received July 29, 1913. W. M. Seabury, Solicitor for Interveners Named in Final Decree, Sims Ely, Receiver. No 53. In the United States District Court, District of Arizona. Charles W. Clark, Plaintiff, vs. Arizona Mutual Savings & Loan Association, and Arizona Trust Company, Defendants. Motion of Farmers and Merchants' Bank, Interveners, and Notice. Filed July 29, 1913. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy. Paul Renau Ingles, Attorney for Farmers & Merchants' Bank, Phoenix, Fleming Block, Phoenix, Arizona. [71]

*In the District Court of the United States, District
of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

**Motion of Farmers and Merchants' Bank, Phoenix,
Intervener, [to Extend Receivership (Filed
September 17, 1913)].**

Now comes Farmers and Merchants' Bank, Phoenix, the intervener above named, and upon its intervening petition and motion heretofore filed in this court on July 29, 1913, renews its said motion, moving the Court to extend the receivership now existing in the above-entitled cause, under and by virtue of the final decree therein of February 27, 1913, and the judgment heretofore on or about July 12, 1913, obtained by said intervener in the Superior Court of Arizona, in the County of Maricopa, amounting to Eighteen Thousand Five Hundred (\$17,500.00) Dollars, with interest, in a cause then pending in said Court, wherein the said Farmers and Merchants' Bank, Phoenix, was plaintiff, and the said Arizona Trust Company, was defendant, for the benefit of your said petitioner, and for the benefit of all other creditors of the defendant Trust Company similarly situated and for the appointment of a master to take

proof of claims against the said defendant Trust Company, and for such other and further relief as the Court may deem proper.

And notice is hereby given that said motion will be brought on for hearing before the Honorable William H. Sawtelle, Judge of the District Court of the United States, District of Arizona, sitting at Phoenix, Arizona, in the [72] Federal Building in said city, on September 15, 1913, at ten o'clock on said day or as soon thereafter as counsel may be heard.

Yours, etc.,

PAUL RENAU INGLES,

Solicitor for Farmers and Merchants' Bank, Phoenix, Intervener, Fleming Building, Phoenix, Arizona.

To Sims Ely, Esq., Receiver for the Defendant, Arizona Mutual Savings & Loan Association, and Arizona Trust Company;

Copy recd. 9/9-13. C. M. Gandy, Atty. for Receiver.

To Arizona Trust Company.

To William M. Seabury, Solicitor for Interveners
Named in Final Decree:

Copy received Sept. 9th, 1913. W. M. Seabury, Atty. for Interveners named in decree. [73]

[Endorsements]: No. 53. In the District Court of the United States, District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association, and Arizona Trust Company, Defendants. Motion of Farmers and Merchants' Bank, Phoenix, Intervener. Filed Sept. 17, 1913,

80 *Farmers and Merchants' Bank, Phoenix, vs.*

at — M. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy. [74]

**[Order of Submission of Petition of Creditors to
Intervene and Set Aside Judgment.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON THURSDAY,
SEPTEMBER 18, 1913.

No. 53.

CHARLES W. CLARK,

Plaintiff,

vs.

ARIZONA SAVINGS AND INVESTMENT COM-
PANY et al.,

Defendants.

This matter came on this day regularly to be heard upon the petition of creditors to intervene and set aside the judgment of the Court herein, Benton Dick, Esq., and J. E. Morrison, Esq., appearing as counsel for the petitioners, Wm. M. Seabury, Esquire, for the interveners named in the decree, and C. M. Gandy, Esq., for the receiver. Argument of the respective counsel was had and the matter being fully submitted to the Court, the same was by the Court taken under advisement, the petitioners to have one week in which to file briefs and the respondents one week thereafter in which to reply thereto. [75]

**[Order of Submission of Motion to Extend
Receivership.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON THURSDAY,
SEPTEMBER 18, 1913.

No. 53.

CHARLES W. CLARK,

Plaintiff,

vs.

ARIZONA SAVINGS AND INVESTMENT COM-
PANY et al.,

Defendants.

This matter came on this day regularly to be heard upon the motion of the Farmers and Merchants' Bank to extend the receivership herein, Paul Renau Ingles, Esq., appearing for said bank, Wm. M. Seabury, Esq., for the interveners named in the decree, and C. M. Gandy, Esq., for the Receiver. Argument of the respective counsel was had and the matter being fully submitted to the Court, the same was by the Court taken under advisement, the said bank to have one week in which to file a brief and the interveners to have one week thereafter in which to file a reply brief. [76]

[Order Making Partial Allowance of \$1,000 to
Receiver for Services, etc.]

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON SATURDAY,
OCTOBER 4th, 1913.

No. 53.

CHAS. W. CLARK,

vs.

ARIZONA MUTUAL SERVICE & LOAN ASSO-
CIATION et al.

Sims Ely, Esq., the Receiver heretofore appointed by the Court in this cause, having heretofore made application for an allowance for Two Thousand Two Hundred Fifty Dollars (\$2,250.00), to be paid to himself for his services as Receiver of the Court herein, and for an allowance for Seven Hundred Fifty Dollars (\$750.00) to be paid to C. M. Gandy, Esq., the attorney for the Receiver, for his services as such; and Willam M. Seabury, Esq., attorney for the Interveners named in the Decree of the Court, and Paul R. Ingles, Esq., attorney for the Farmers' and Merchants' Bank, and Benton Dick, Esq., attorney for the petitioners named in the petition filed July 29th, 1913, being present in open court at the hearing, and the said matter coming on *regular* this day to be heard by the Court, and the testimony of witnesses offered by the Receiver in support of his said application having been heard and materially con-

sidered by the Court, and no objections having been made by any of the parties in interest herein to the allowance prayed for in his application, [77]

IT IS ORDERED, that a partial allowance of One Thousand Dollars (\$1,000.00), be, and the same is hereby made to the said Receiver for his said services as such; the same to be paid by him out of the Receivership funds now in his hands and to be allowed to the receiver as a credit in the settlement of his final accounts as Receiver; and

IT IS FURTHER ORDERED that the said Receiver pay, and he is hereby authorized to pay to C. M. Gandy, Esq., the sum of Five Hundred Fifty Dollars (\$550.00), in cash, out of the funds now in the hands of the Receiver as such, the said sum to be in addition to the sum of Two Hundred Dollars (\$200.00) heretofore paid by the Receiver to said attorney, thereby making a total of Seven Hundred Fifty Dollars (\$750.00), to be in full and complete satisfaction of all claims of the said attorney for his services as attorney for the Receiver up to the date of this order; and

IT IS FURTHER ORDERED, that the said sum of Seven Hundred Fifty Dollars (\$750.00), when paid as aforesaid, shall be allowed to the said Receiver as a credit in the final settlement of his account as such. [78]

**[Order Continuing Hearing on Motion to Require
Receiver to Perform Terms of Decree Until
Other Submitted Matters be Disposed of.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON MONDAY, OCTO-
BER 6th, 1913.

No. 53.

CHARLES W. CLARK,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSO-
CIATION et al.,

Defendants.

IT IS ORDERED that the hearing on the motion of the interveners named in the decree of September 27th, 1913, to require the Receiver to perform the terms of the Decree, be and the same is hereby continued until the other matters heretofore submitted to the Court shall have been disposed of. [79]

**[Order Directing Entry of Appearance of Stoneman
& Ling as Attorneys for Receiver.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON TUESDAY, OCTOBER 14, 1913.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSOCIATION et al.,

Defendants.

Upon motion of George J. Stoneman, Esq., IT IS ORDERED that the names of Stoneman & Ling, attorneys at law, practicing in this court, be entered as attorneys for the receiver in this cause. [80]

**[Order Setting Case for Argument on January 10,
1914.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON SATURDAY,
DECEMBER 20, 1913.

No. 53.

CHARLES CLARK,

Complainant,

vs.

86 *Farmers and Merchants' Bank, Phoenix, vs.*

ARIZONA MUTUAL LOAN AND SAVINGS
COMPANY,

Defendant.

IT IS ORDERED that this case be set for argument on January 10th, 1914. [81]

**[Order Authorizing Receiver to Pay Bill of I. W.
Wallace for Taxes and Repairs.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON SATURDAY,
DECEMBER 20th, 1913.

No. 53.

CHARLES CLARK,

Complainant,

vs.

ARIZONA MUTUAL LOAN AND SAVINGS
COMPANY,

Defendant.

IT IS ORDERED that the receiver herein be and he is hereby authorized to pay the bill of I. W. Wallace for taxes and repairs amounting to \$300.09, expended by him upon the property of the defendant, providing that said bill be first approved by George D. Christy, who was receiver herein at the time said expenditure was made. [82]

[Order on Hearing as to Question of Jurisdiction.]
*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON SATURDAY,
JANUARY 10, 1914.

No. 53.

CHARLES W. CLARK,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN AS-
SOCIATION et al.,

Defendants.

This day came the parties by their attorneys and the question as to the jurisdiction of the Court to make the decree of February 27th, 1913, was argued by counsel but not completed, and it is ordered that the said argument be resumed on January 12th, 1914, at three o'clock P. M. [83]

**[Order Continuing Hearing on Question of
Jurisdiction.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON MONDAY,
JANUARY 12, 1914.

No. 53.

CHARLES W. CLARK,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSO-
CIATION,

Defendant.

The argument commenced in this case on January 10th, 1914, and continued until to-day, was this day resumed, and the Court having requested George J. Stoneman, Esquire, counsel for the receiver herein, to present to the Court his views on the law question now before the Court. Objection was made to the argument of the case by Mr. Stoneman by William M. Seabury, Esquire, counsel for the interveners named in the decrees of February 27th, 1913, and the Court thereupon overruled said objection, to which ruling and order of the Court, the counsel for said interveners excepted and asked that his exception be noted upon the record, which was accordingly done, and thereupon the said matters were argued by George J. Stoneman, Esquire, and the reply of Wm. M. Seabury, Esquire, not having been completed, the further hearing of the argument herein was ordered to be continued until a future day of this term, when counsel will be notified by the Court of the time for hearing same. [84]

[Order of Submission of Question of Jurisdiction.]
*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON THURSDAY,
JANUARY 15, 1914.

No. E-53.

THOMAS P. CLARK,

Plaintiff,

vs.

ARIZONA MUTUAL LOAN & SAVINGS ASSO-
CIATION,

Defendant.

The argument begun herein on January 10th, and continued on January 12th, and not completed, was this day completed and the matter thereon enjoined was taken under advisement by the Court until a future day of this term. [85]

**[Order Setting Motion of William L. Rosa for Leave
to Intervene, etc., for Hearing.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON SATURDAY,
JANUARY 24, 1914.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION et al.,

Defendants.

William L. Rosa, having given notice to parties in interest in this cause that he would on Saturday, the 24th day of January, 1914, thereupon move, or as soon thereafter as could be heard, move the Court for an order allowing him to intervene in this cause and an order requiring the parties named in the petition to answer within a time to be fixed by the Court; and he, having filed in this Court notice of his said motion, IT IS ORDERED that the said matter be set down for hearing at a future day of this term, to be hereafter fixed by the Court. [86]

[Order of Submission of Application of William L. Rosa for Leave to Intervene.]

In the United States District Court for the District of Arizona.

MINUTE ENTRY MADE ON THURSDAY,
JANUARY 29th, 1914.

No. 53.

CHAS. W. CLARK,

Plaintiff,

vs.

ARIZONA MUTUAL LOAN AND SAVINGS
ASSOCIATION,

Defendant.

The application of William L. Rosa for leave to intervene herein, was this day argued in his behalf by F. C. Struckmeyer, Esquire, and on behalf of the

interveners named in the decree of February 27th, 1913, by William M. Seabury, Esquire, and same submitted to the Court for its decision and judgment, and the Court thereupon takes the same under advisement. [87]

**[Order Allowing Sims Ely Further Sum for Services
as Receiver.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON THURSDAY,
JANUARY 29, 1914.

No. 53.

CHAS. W. CLARK,

Plaintiff,

vs.

ARIZONA MUTUAL LOAN AND SAVINGS
ASSOCIATION,

Defendant.

IT IS ORDERED that Sims Ely be allowed the further sum of Five Hundred Dollars (\$500.00) on account of his services as receiver herein. [88]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—No. 53.

CHARLES W. CLARK,

Complainant,

vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION and THE ARI-
ZONA TRUST COMPANY,

Defendants.

Decree [March 12, 1914].

The bill in this cause was filed by a stockholder of the Arizona Mutual Savings and Loan Association on behalf of himself and all other stockholders who might desire to come in and join in the suit. Its fundamental equity is the wrongful transfer of assets of the Loan Association to the Trust Company and the fundamental relief prayed for is the restitution of the assets of the Loan Association to that corporation, or to the receiver of that corporation, to be distributed to its stockholders on its dissolution by order of the Court.

The answers of both the Loan Association and Trust Company show the circumstances of the transfer of the assets of the Loan Association were clearly and plainly illegal and fraudulent and without effect to legally transfer these assets and clearly establish the right of the Loan Association to a full restitution.

The various intervening petitions filed prior to the decree in this cause contain in each a prayer "that the transactions therein set forth as made between the said Loan Association and the said Trust Company may be declared to be annulled and of no force and effect, and that a restitution of all the assets of the defendant Loan Association from the defendant Trust Company be adjudged and decreed; that an accounting between both [89] of the de-

pendants above named be had and taken; that the Court appoint a Master to take proof of the facts alleged in the bill and to determine the rights and equities of all the parties concerned herein, and that the effects of the Loan Association be wound up, its assets marshalled as aforesaid and distributed to those found to be entitled thereto." In neither the original bill nor in any intervening petition is there any prayer for a confirmation of the title of the Trust Company or that the Court should vest the title of the property in that company.

In all the pleadings the relief sought is based on the legal and equitable rights of the Loan Association to have a complete restitution of its assets and to have its assets marshalled and distributed to those found to be entitled thereto.

It is too clear to admit of argument that the assets of the insolvent corporation after the payment of its just debts are to be distributed equally amongst its stockholders and that the Court has no warrant of law to make any other disposition of them as between the stockholders. There is no order in this case giving notice to the stockholders to present their claims to the assets of the company or to show their interest in its property.

The decree entered herein on the 27th day of February, A. D. 1913, without such notice and opportunity being afforded and without referring the case to a Master, as prayed in the bill, to determine the rights and equities of all parties concerned, is that said stockholders mentioned in the decree shall receive all they have paid in, not their proportionate

share of the assets of the Loan Association and by this means these particular stockholders are relieved of all participation in any losses of the Loan Association and are given a lien upon said assets to the exclusion of other stockholders. [90]

It is fundamental that where a judgment or decree has been made which is responsive to the pleadings and in the due course of the lawful jurisdiction of the Court, such decree is beyond the power of the Court to modify or change after the adjournment of the term at which it is rendered, but it does not follow that because this is so that the Court may not set aside or modify a judgment which is not of such a character. In order to render the judgment or decree a finality, the emphatic requirement is that it must be responsive to the matters litigated, and in consonance with the legal relief to which the facts averred show the parties to be entitled.

The question is, has the Court jurisdiction to the extent claimed, and to constitute this there are four essentials:

First: The Court must have cognizance of the class of cases to which the one adjudged belongs.

Second: The proper parties must be present.

Third: The point decided must be in *substance and effect* within the issues.

Fourth: The Court must have proceeded after having acquired jurisdiction of the case "according to established modes governing the class to which the case belongs."

A Court must not go outside of its appointed sphere and it is impossible to concede that because

A. and B. are parties to a suit, that the Court has the right or power to decide or determine any matter in which they are interested whether the matter is involved in the pending litigation or not. A judgment on the matter outside the issues is of necessity altogether unjust because it concludes a point upon which the parties have not been heard. In order to make a judgment conclusive not only the proper parties must be present, but the Court must act on the property according to the rights which [91] appear on the record.

It is the opinion of the Court that the decree of February 27th, 1913, which attempts to vest the title of the assets of the Loan Association in the Trust Company is beyond the issues of the case made by the bill and answers and intervening petitions, it being shown by the pleadings that the Loan Association was insolvent when it did so and that it received no legal consideration for such transfer.

I am likewise of the opinion that the Court exceeded its powers on the pleadings and proof before it when it gave a lien to the intervening creditors on the assets of the Loan Association in the hands of the Trust Company for the amount they had paid in and compelled the parties who were interested in the assets of the Loan Association to bear all the losses incurred by the Loan Association in the conduct of its business.

IT IS THEREFORE ORDERED that the decree of the 27th day of February, A. D. 1913, be and the same is hereby modified as follows:

IT IS ORDERED that all the properties and

assets of every kind and description which were transferred to the Trust Company by the Loan Association, be restored to the said Loan Association, or the receiver for said Loan Association, and that all contracts, conveyances or agreements which were entered into by the said Loan Association or its agents or officers, be and the same are hereby set aside, vacated and annulled.

IT IS FURTHER ORDERED that the Trust Company transfer and deliver to the receiver in this cause, all property of every kind received by it, its officers or agents, from or on account of the transfer of the said assets of the said Loan Association [92] or received by it from the use and investment or other disposition of any moneys or other property of the said Loan Association.

IT IS FURTHER ORDERED that this cause be referred to Edwin F. Jones, Standing Master of this Court, to state the account between the Loan Association and the Trust Company and to that end he shall hear testimony and may examine and inspect all papers on file in this Court or in the hands or possession of the receiver in this cause.

IT IS FURTHER ORDERED that the said Standing Master ascertain and report the exact amount due by said Loan Association to each of its stockholders, and in order to do so he is directed to publish a notice in some newspaper in the City of Phoenix for at least five times, requiring all persons claiming to be stockholders in said Loan Association to file their claim, with proof thereof, with him within thirty (30) days from the first publication of

such notice, and that he send by mail to each of the stockholders of said Loan Association a copy of such notice.

IT IS FURTHER ORDERED that the said Standing Master report on the priorities or equities of all persons claiming to be interested in the property of the said Loan Association and the order in which same are to be paid out of the assets of the said Loan Association.

IT IS FURTHER ORDERED that the Master report what are the rights of said Loan Association in any assets now in the hands of persons not parties to this suit and whether or not same can be recovered from the parties to whom they were transferred.

IT IS FURTHER ORDERED that the Master ascertain and report what sum of money or other assets of the said Loan Association were unlawfully used by any officer or agent of either the Loan Association or Trust Company, and whether same or any part thereof can be recovered from said parties or their transferees. [93]

IT IS FURTHER ORDERED that the demurrers to the petitions now on file seeking intervention, be and the same are overruled and that the petitioning parties mentioned in the petition of July 15th, 1913, be allowed to intervene in this cause and present their claims to the Master for adjudication in accordance with this decree.

IT IS FURTHER ORDERED that Sims Ely, the receiver in this cause, be appointed general receiver herein, with all proper powers and that he hold all of the assets and property now in his hands belonging

98 *Farmers and Merchants' Bank, Phoenix, vs.*

to either of said corporations until the further order of this Court.

All other questions are reserved until the coming in of the report of the Master.

DONE IN OPEN COURT this 12th day of March,
A. D. 1914.

(Signed) WM. H. SAWTELLE,
Judge. [931½]

**[Order Denying Motion of Farmers and Merchants'
Bank, Phoenix, to Extend Receivership, etc.,
and Dismissing Intervening Petition.]**

*In the District Court of the United States for the
District of Arizona.*

MINUTE ENTRY MADE ON THURSDAY,
MARCH 12th, 1914.

FARMERS AND MERCHANTS' BANK,
PHOENIX, Intervener.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

Farmers and Merchants' Bank, Phoenix, having filed its intervening petition in the above-entitled cause, and having filed a motion moving the Court to extend the receivership existing in the above-entitled cause under and by virtue of the final decree therein of February 27, 1913, to include the judgment of

Farmers and Merchants' Bank, Phoenix, therein, for the benefit of the said Farmers and Merchants' Bank, Phoenix, and all other creditors of the defendant Trust Company similarly situated, and for the appointment of a master to take proof of claims against the said defendant Trust Company and said matter coming on to be heard before the Court on the 12th day of March, 1914, Paul Renau Ingles appearing for the intervener Farmers and Merchants' Bank, Phoenix, and no one appearing in opposition thereto, said motion is hereby denied; the prayer of the petition in intervention, being No. 4, contained on page 26 of said intervening petition, beginning on line 9 thereof [94] and concluding on line 21 thereof, being the prayer for the issuance of a writ of subpoena of the United States of America issued out of and under the seal of this Honorable Court, directed to A. J. Edwards, W. T. Smith, John T. Dunlap and J. Wesley Walker, is hereby denied and said intervening petition is hereby dismissed. [95]

**[Order Directing Clerk to Furnish Certified Copy of
Decree to Receiver and Master.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON THURSDAY,
MARCH 12th, 1914.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

IT IS ORDERED that a copy of the decree this day entered herein by this Court, certified to under the hand of the Clerk and the seal of the Court, be furnished by the Clerk to the Receiver and Master herein. [96]

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY MADE ON THURSDAY,
MARCH 26th, 1914.

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSO-
CIATION and ARIZONA TRUST COM-
PANY,

Defendants.

**Order [Denying Petition for Appeal from Order of
March 12, 1914, etc.].**

On reading the petition of the Farmers & Merchants' Bank praying an appeal from the order of the Court made and entered herein on March 12th, 1914, denying the said petition of the Farmers & Merchants' Bank for leave to intervene herein and dismissing the said petition, and also from the decree

made herein by this Court on March 12th, 1914. in the original cause,

IT IS ORDERED that the prayer of said petitioner for an appeal, be and the same is hereby denied, upon the ground that the said Farmers & Merchants' Bank not being a party of the original cause can have no right of appeal from any order or decree made in said cause.

IT IS FURTHER ORDERED that said petitioner is entitled to appeal from the order made herein on March 12th, 1914, denying its right to intervene and dismissing its petition, and upon presentation of the proper petition the appeal will be granted upon giving bond conditioned as required by law.

Dated this 26th day of March, A. D. 1914.

WM. H. SAWTELLE,

Judge of the District Court of the United States for the District of Arizona. [97]

[Endorsements]: No. 53. In the District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings & Loan Association and Arizona Trust Company, Defendants. Order. Filed Mch. 27, 1914. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. [98]

[Affidavit of Paul Renau Ingles.]

*In the District Court of the United States, for the
District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

State of Arizona,

County of Maricopa,—ss.

PAUL RENAU INGLES, being duly sworn, says:

I am a solicitor of this Court and the solicitor for the Farmers and Merchants' Bank, Phoenix, the petitioner herein;

On or about July 29, 1913, the said Farmers and Merchants' Bank, Phoenix, as a judgment creditor of the defendant Trust Company, filed its petition in intervention in the above-entitled cause, praying in substance that the receivership then existing over the properties and assets of the defendant Trust Company be extended to the judgment of the said Farmers and Merchants' Bank, Phoenix, obtained in the Superior Court of the State of Arizona, in and for Maricopa County, not only for the benefit of said Farmers and Merchants' Bank, Phoenix, but for the benefit of all other judgment creditors and for the benefit of all having claims of any kind or character

against the defendant Trust Company; praying further that a master be appointed before whom all claimants might present their claims against the defendant Trust Company, and that notice be sent [99] to all claimants against said Trust Company and that the assets be marshalled and the affairs of the said Trust Company wound up and finally settled; further praying for issuance of process against A. J. Edwards, W. T. Smith, John T. Dunlap and J. Wesley Walker; further praying that the said Edwards, Smith, Dunlap and Walker make an accounting; and for general relief.

At said time there was in existence in said cause a final decree dated and entered February 27, 1913, directing the receiver therein appointed to pay to the persons therein named the sums therein specified, and to pay the surplus thereafter remaining, if any, to the defendant Trust Company.

I am informed and verily believe that there will be a surplus in the receiver's hands if he is permitted to perform the terms of the decree of February 27, 1913; and on behalf of the said Farmers and Merchants' Bank, Phoenix, I assert that said bank acquired and has a vested property right in the surplus moneys of said Trust Company under the decree of February 27, 1913, for the reasons set out in said intervening petition.

On March 12, 1914, the Court below entered an order dismissing the petition of the said Farmers and Merchants' Bank, Phoenix, denying it leave to intervene in said cause as to said surplus, and, notwithstanding the fact that the term at which the

final decree of February 27, 1913, was entered, expired on April 5, 1913, by reason of which the court had no jurisdiction in the premises, the Court on March 12, 1914, made and entered another and wholly different decree in said cause, which among other things reopened the above-entitled cause and deprived the Farmers and Merchants' Bank, Phoenix, of its vested rights in the surplus moneys inuring to the defendant Trust Company under the decree of February 27, 1913, by the following provision: "It is further ordered that the Trust Company transfer and deliver to the receiver in this cause all property of every kind [100] received by it, its officers or agents from or on account of the transfer of the said assets of the said Loan Association or received by it from the use and investment or other disposition of any moneys or other property of the said Loan Association"; all to the great prejudice of the Farmers and Merchants' Bank, Phoenix.

The said Farmers and Merchants' Bank, Phoenix, claiming to have been a party to the record of said cause since the filing of its petition in intervention therein on July 29, 1913, notwithstanding the denial of its application to intervene, and feeling itself aggrieved both by the order of dismissal and by the decree of March 12, 1914, for the reasons stated, desired to review the said order and said decree in the Circuit Court of Appeals for this circuit, and to that end on March 24, 1914, filed a notice of appeal and submitted to the Honorable District Judge of this district the appeal papers, copies of which are hereto annexed, for allowance, but on or about March

26, 1914, the Court entered the order a certified copy of which is hereto annexed, denying the application of the Farmers and Merchants' Bank, Phoenix, for leave to appeal as therein stated.

WHEREFORE, pursuant to the authority conferred upon the Judge of the Circuit Court of Appeals under Section 132, Judicial Code, the Farmers and Merchants' Bank, Phoenix, prays that an appeal be allowed both from the decree of March 12, 1913, and the order of said date, and that the bond on said appeal be fixed accordingly.

PAUL RENAU INGLES.

Subscribed and sworn to before me, this 28th day of March, A. D. 1914.

[Notarial Seal]

B. L. RUDDEROW,
Notary Public.

(My commission expires Sept. 26, 1916.) [101]

*In the United States District Court for the District
of Arizona.*

No. 53.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

ORDER.

On reading the petition of the Farmers & Merchants' Bank praying an appeal from the order of the Court made and entered herein on March 12th,

1914, denying the said petition of the Farmers & Merchants' Bank for leave to intervene herein and dismissing the said petition, and also from the decree made herein by this Court on March 12th, 1914, in the original cause,

IT IS ORDERED that the prayer of said petitioner for an appeal, be and the same is hereby denied, upon the ground that the said Farmers & Merchants' Bank not being a party of the original cause can have no right of appeal from any order or decree made in said cause.

IT IS FURTHER ORDERED that said petitioner is entitled to appeal from the order made herein on March 12th, 1914, denying its right to intervene and dismissing its petition, and upon presentation of the proper petition the appeal will be granted upon giving bond conditioned as required by law.

Dated this 26th day of March, A. D. 1914.

WM. H. SAWTELLE,
Judge of the District Court of the United States for
the District of Arizona. [102]

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of an order of Court made Mch. 26, 1914, as the same appears from the original records of the same remaining in my office.

WITNESS my hand and the seal of said Court
affixed this 28th day of March, 1914.

[Seal of the Court]

GEO. W. LEWIS.

Clerk.

By R. E. L. Webb,

Deputy Clerk. [103]

[Endorsements]: No. E-53. In the District Court
of the United States, for the District of Arizona.
Charles W. Clark, Complainant, vs. Arizona Mutual
Savings and Loan Association and Arizona Trust
Company, Defendants. Affidavit. Filed Apr. 15,
1914. Geo. W. Lewis, Clerk. By R. E. L. Webb,
Deputy. [115]

*In the District Court of the United States for the
District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

Notice of Appeal.

The Farmers and Merchants' Bank, Phoenix, hav-
ing filed its intervening petition in the above-entitled
cause on or about July 29, 1913, and having on or
about said day duly moved this Court for leave to
intervene in said cause, and for the other relief
prayed for in said motion, and said Court having, on
or about March 12, 1914, denied said relief and en-

tered an order herein as of said date dismissing the said petition of the said Farmers and Merchants' Bank, Phoenix, as aforesaid;

Now, therefore, comes the said Farmers and Merchants' Bank, Phoenix, and hereby appeals from the said order of March 12, 1914, so made and entered as aforesaid, and also appeals from the final decree, so-called, entered in the above-entitled cause on or about March 12, 1914, which said decree purports, among other things, to annul, vacate and set aside the final decree entered in the above-entitled cause on February 27, 1913, and the said Farmers and Merchants' Bank, Phoenix, hereby appeals, and gives notice thereof, from each and every part of the said final decree of March 12, 1914, and the said order of March 12, 1914, so described as aforesaid, to the Circuit Court of Appeals in and for the Ninth Circuit.

Dated at Phoenix, Arizona, this 24th day of March, 1914.

PAUL RENAU INGLES,

Solicitor for the Farmers and Merchants' Bank,
Phoenix, Fleming Building, Phoenix, Arizona.

[104]

[Endorsements]: No. 53. In the District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association and Arizona Trust Company, Defendants. Notice of Appeal. Filed Mar. 24, 1914, at — M. George W. Lewis, Clerk. By Robert E. L. Webb, Deputy. [105]

*In the District Court of the United States, for the
District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

**Petition of Farmers and Merchants' Bank, Phoenix,
for an Order Allowing It to Appeal from the
Order of March 12, 1914, and from the Decree
Entered Herein on March 12, 1914.**

To the Honorable WILLIAM H. SAWTELLE,
Judge of the District Court in and for the Dis-
trict of Arizona.

The above-named Farmers and Merchants' Bank, Phoenix, petitioner herein, feeling itself aggrieved by the order of this Honorable Court made and entered herein on March 12, 1914, whereby the said Court dismissed the petition of the said Farmers and Merchants' Bank, Phoenix, for leave to intervene in the said cause, for an order extending the receivership then and now existing over the defendant Trust Company above named to the judgment of the said Farmers and Merchants' Bank, Phoenix, heretofore recovered as set out in its intervening petition, and denying to the said Farmers and Merchants' Bank, Phoenix, the process of this Honorable Court against the persons named in said petition, and feeling itself

aggrieved by the decree entered in the above-entitled cause in this Honorable Court on March 12, 1914, which said decree purported to vacate, annul and set aside the final decree herein entered and enrolled on the 27th day of February, 1913, does hereby appeal from said order of March 12, 1914, and from said decree of March 12, 1914, and each and every part of each said order and said decree to the Circuit Court of Appeals in and for the Ninth Judicial Circuit [106] for the reasons specified in the assignment of errors which is filed herein; and your petitioner prays that its appeal be allowed and that such citation issue as is provided by law, and that a transcript of the records, proceedings and papers upon which said decree of March 12, 1914, and said order of March 12, 1914, was based, duly authenticated, may be sent to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, sitting at the city of San Francisco, State of California; and your petitioner further prays that the proper order touching the security required of it to perfect its said appeal herein be made.

PAUL RENAU INGLES,

Solicitor for the Farmers and Merchants' Bank,
Phoenix, Fleming Building, Phoenix, Arizona.

[Order Granting Petition and Allowing Appeal.]

The foregoing petition is granted and the appeal therein prayed allowed upon giving bond in the sum of Five Hundred Dollars, conditioned as required by law and to answer all costs on said appeal.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals
for the Ninth Circuit. [107]

[Endorsements]: No. 53. In the District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association, and Arizona Trust Company, Defendants. Petition for Appeal and Order Allowing Same. Filed Mar. 24, 1914, at — M. George W. Lewis, Clerk. By Robert E. L. Webb, Deputy. [108]

*In the District Court of the United States, for the
District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN AS-
SOCIATION and ARIZONA TRUST COM-
PANY,

Defendants.

Assignment of Errors.

And now on this 24th day of March, 1914, comes the Farmers and Merchants' Bank, Phoenix, as intervener herein, by its solicitor, Paul Renau Ingles, and complains and alleges:

That the decree entered herein in the above-entitled cause on the 12th day of March, 1914, and the order entered in the above-entitled cause dismissing the petition of the said Farmers and Merchants' Bank, Phoenix, and entered on March 12, 1914, are each erroneous and unjust to the said Farmers and Merchants' Bank, Phoenix, and that the learned District Court of the United States in and for the District

of Arizona erred in making said decree and said order respectively in each and all of the following particulars:

I.

The said Court erred in making and entering the said decree of March 12, 1914, as to your petitioner, Farmers and Merchants' Bank, Phoenix, in that it *assumed exert* and exercise jurisdiction over the final decree entered and enrolled herein on February 27, 1913, after the expiration of the term of said court at which said final decree of February 27, 1913, was duly entered and enrolled, which said time expired on April 5, 1913, and that on March 12, 1914, when the said decree of this Honorable [109] Court was entered herein the said Court was wholly without power and jurisdiction to vacate, modify or annul the said decree of February 27, 1913, for the reasons stated.

II.

That the learned Court below erred in so vacating the final decree of February 27, 1913, by its said decree of March 12, 1914, because and for the reason that the said Farmers and Merchants' Bank, Phoenix, on or about July 12, 1913, when it recovered its judgment against the defendant Trust Company above named, for the sum of \$18,500, in the Superior Court of the State of Arizona, in and for the County of Maricopa, acquired and became *vested* a property right in and to the surplus moneys remaining after the terms of the said final decree of February 27, 1913, herein described had been duly performed and executed, and that the learned Court below erred,

and had no jurisdiction, right or authority to vacate or modify said decree of February 27, 1913, as against your said petitioner, Farmers and Merchants' Bank, Phoenix, after the expiration of the October Term, 1912, of said District Court at which said decree of February 27, 1913, was *entered expired* on April 5, 1913.

III.

That the Court further erred as to the said Farmers and Merchants' Bank, Phoenix, in rendering and entering its said decree of March 12, 1914, herein, in that by so doing the learned Court thereby adjudged and determined the rights of minority preferred stockholders in the defendant Trust Company to be superior to the rights of the said Farmers' and Merchants' Bank, Phoenix, as a lawful judgment creditor of the defendant Trust Company in and to the surplus assets of said defendant Trust Company remaining after the performance, satisfaction and discharge of the terms of the said final decree of February 27, 1913. [110]

IV.

That the learned Court erred in making its order of March 12, 1914, in the above-entitled cause, dismissing the petition of the Farmers and Merchants' Bank, Phoenix, for leave to intervene in said cause in each and all of the following respects and particulars, namely:

A. Because in and by the said order the said learned Court denied to your said petitioner the right to intervene in the said proceeding as to the surplus moneys therein involved after payment of the liens

described in the decree of February 27, 1913, although and notwithstanding the fact that the said Farmers and Merchants' Bank, Phoenix, as a lawful judgment creditor of the defendant Trust Company was lawfully entitled to participate in said surplus moneys; and due to the fact that the said learned Court had in its possession the *res*, i. e., all of the properties then belonging to the defendant Trust Company the said Farmers and Merchants' Bank, Phoenix, was required to apply to the said Court for the protection of its said rights therein, which said rights the said learned Court by its said order declined to protect and dismissed your said Farmers and Merchants' Bank, Phoenix, from said court without any other remedy at law or otherwise for the protection of its said rights.

V.

That said learned Court further erred in making said order of March 12, 1914, in that it denied to the said Farmers and Merchants' Bank, Phoenix, process against the individuals, A. J. Edwards, W. T. Smith, John T. Dunlap and J. Wesley Walker, to compel the said individuals to respond to the allegations of the said intervening petition to the end that the estate of the defendant Trust Company then in the hands of the receiver of the [111] court below might be increased and enhanced for the benefit of the said Farmers and Merchants' Bank, Phoenix, as a lawful judgment creditor of the defendant Trust Company and others similarly situated.

VI.

That the learned Court further erred in denying

the application of the said Farmers and Merchants' Bank, Phoenix, to extend the limited receivership then existing over the defendant Trust Company to the judgment of the said Farmers and Merchants' Bank, Phoenix, against the said defendant Arizona Trust Company.

VII.

That said learned Court further erred in dismissing the petition of the said Farmers and Merchants' Bank, Phoenix, which said petition upon the face thereof disclosed facts sufficient to constitute a cause in equity justifying the intervention of the said Farmers and Merchants' Bank, Phoenix, in the above-entitled cause, as to the surplus moneys remaining after the payment of the liens described in said final decree of February 27, 1913.

VIII.

Said Court further erred in denying the application of the said Farmers and Merchants' Bank, Phoenix, for leave to intervene in said cause in the exercise of its supposed discretion, but that in reality said Farmers and Merchants' Bank, Phoenix, was and now is entitled to intervene in said cause as a matter of right and that its right of intervention does not depend upon the exercise of discretion of the learned Court below.

Wherefore, the said Farmers and Merchants' Bank, Phoenix, prays that said decree of March 12, 1914, may be directed to be expunged from the records of the court below for want of [112] jurisdiction in said court to grant said decree, and that the learned Court below be directed to reinstate

said decree of February 27, 1913, as the final decree in the above-entitled cause and that the order entered herein by the learned Court below on March 12, 1914, dismissing the petition of the said Farmers and Merchants' Bank, Phoenix, in intervention herein be reversed for the errors herein assigned; and that the learned Court below be directed to allow the said petition to be filed in the above-entitled cause, and process to issue thereon as prayed for therein; and that the learned Court below be instructed to grant the motion of the said Farmers and Merchants' Bank, Phoenix, to extend the said receivership of the said defendant Trust Company to the judgment of the said Farmers and Merchants' Bank, Phoenix, against said defendant Trust Company; and that the said Farmers and Merchants' Bank, Phoenix, have such other relief in the premises as to this Court may seem proper.

PAUL RENAU INGLES,
Solicitor for Farmers and Merchants' Bank, Phoenix, Fleming Building, Phoenix, Arizona.

[Endorsements]: No. 53. In the District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association, and Arizona Trust Company, Defendants. Assignment of Errors. [113]

[Endorsements]: No. 53. In the District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association, and Arizona Trust Company, Defendants. Assignment of Errors.

Filed Mar. 24, 1914, at — M. George W. Lewis,
Clerk. By Robert E. L. Webb, Deputy. [114]

*In the District Court of the United States in and for
the District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN AS-
SOCIATION and ARIZONA TRUST COM-
PANY,

Defendants.

FARMERS AND MERCHANTS' BANK, PHOE-
NIX,

Intervener.

Praeipie for Transcript of Record.

To the Clerk of the United States Court in and for
the District of Arizona:

You will please prepare a transcript of record in
the above-entitled cause to be filed in the office of the
Clerk of the United States Circuit Court of Appeals
for the Ninth Judicial Circuit upon an appeal to be
perfected to said court in said cause, including in
said transcript the following proceedings, pleadings,
papers, records and files, to wit:

Decree of February 27, 1913.

Petition in intervention and motion filed by Mr.
Benton Dick on July 15, 1913.

Petition in intervention of Farmers and Merchants'
Bank, Phoenix, and motion thereon filed July
29, 1913, together with proof of service thereon.

118 *Farmers and Merchants' Bank, Phoenix, vs.*

Renewal of motion on petition of Farmers and Merchants' Bank, Phoenix.

Decree of March 12, 1914.

Order of March 12, 1914.

All minute entries made since decree of February 27, 1913.

Notice of appeal. [116]

Petition for appeal, together with order allowing same.

Assignment of errors.

Bond on appeal.

Citation.

Praeipie for transcript.

Certificate of clerk.

(Signed) PAUL RENAU INGLES,
Solicitor for Farmers and Merchants' Bank, Phoenix, Intervener.

[Endorsements]: E-53. In the District Court of the United States in and for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association, and Arizona Trust Company, Defendants. Farmers and Merchants' Bank, Phoenix, Intervener. Praeipie for Transcript of Record. Filed Apr. 22, 1914, at — M. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. [116½]

*In the District Court of the United States, for the
District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN AS-
SOCIATION and ARIZONA TRUST COM-
PANY,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we, Farmers and Merchants' Bank, Phoenix, as
principal, and A. G. Smoot and G. L. Wilky, as sure-
ties, acknowledge ourselves to be indebted jointly and
severally to the Arizona Mutual Savings and Loan
Association and the Arizona Trust Company and
Sims Ely, Esq., as receiver of each said companies,
in the sum of Five Hundred and no/100 Dollars, con-
ditioned that whereas on or about the 12th day of
March, 1914, in the District Court of the United
States for the District of Arizona in a suit depending
in that court, wherein Charles W. Clark was com-
plainant and the Arizona Mutual Savings and Loan
Association and the Arizona Trust Company were
defendants, a certain decree which purported to
vacate the decree theretofore entered in said cause
denying the right of the Farmers and Merchants'
Bank, Phoenix, to intervene in said cause, and dis-

missing the intervening petition of the said Farmers and Merchants' Bank, Phoenix, and the said Farmers and Merchants' Bank, Phoenix, having obtained an appeal to the Circuit Court of Appeals in and for the Ninth Judicial Circuit from said decree and from said order of March 12, 1914, which has been duly filed in the office of the Clerk of the said Court to reverse the said decree and order of March 12, 1914, and a citation directed to the said defendants in said suit and the said Sims Ely as receiver thereof and admonishing him and them to be and appear at a session of the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit to be holden in the city [117] of San Francisco, in the State of California, on the 15th day of May, 1914, next. Now, if the said Farmers and Merchants' Bank, Phoenix, shall prosecute said appeal to effect and answer all costs if it shall fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

And the said bond and obligation is upon the further express condition and agreement by the sureties thereto, that in case of a breach of the condition set forth herein, this Court may upon notice to said sureties of not less than ten days proceed summarily in said action or suit in which this bond is given to ascertain the amount which said sureties are bound to pay on account of such breach of said bond and undertaking and render judgment against the said

sureties and each of them and award execution thereon.

(Signed) FARMERS AND MERCHANTS'
BANK, PHOENIX,

By J. P. IVY, Pres.

(Signed) A. G. SMOOT.

(Signed) G. L. WILKEY.

Approved as to form and sufficiency of the sureties
this 15th day of April, 1914.

(Signed) WM. H. SAWTELLE,
Judge of the District Court of the United States for
the District of Arizona. [118]

State of Arizona,
County of Maricopa,—ss.

A. G. Smoot and G. L. Wilky, being duly and severally sworn, each for himself deposes and says: I am one of the sureties upon the above bond and undertaking; I am a resident and freeholder within the District of Arizona and worth the amount specified in such bond and undertaking over and above all my debts and liabilities exclusive of property exempt from execution, and that your deponent makes these statements for the purpose of inducing the parties and the Court to accept him as a surety upon the above bond and undertaking, knowing that said Court and parties rely upon the truth thereof.

(Signed) A. G. SMOOT.

(Signed) G. L. WILKY.

122 *Farmers and Merchants' Bank, Phoenix, vs.*

Subscribed and sworn to before me this 15th day of April, 1914.

[Seal of Court]

(Signed) GEORGE W. LEWIS,
Clerk U. S. District Court, District of Arizona.
[119]

[Endorsements]: No. 53. In the District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association and Arizona Trust Company, Defendants. Bond on Appeal. Filed April 15, 1914. George W. Lewis, Clerk. [120]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—No. 53.

CHARLES W. CLARK,

Complainant,

vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION and THE ARI-
ZONA TRUST COMPANY,

Defendants.

IN THE MATTER OF THE APPLICATION OF
THE RECEIVER FOR AN ORDER AP-
PROVING EXECUTION OF CERTAIN
DEEDS IN CHAMBERS.

**Order [Approving and Confirming Action of
Receiver in Certain Matters.]**

The petition of Sims Ely, Receiver of the Arizona Mutual Savings and Loan Association and The Ari-

zona Trust Company, for an order confirming his action in executing and delivering to Samuel Itule a quitclaim deed to Lot 1, Block 19, Bisbee Townsite, County of Cochise, State of Arizona, for the sum of Eight Hundred (\$800.00) Dollars, and confirming his action in the execution of a quitclaim deed to portions of Lots No. 31 and No. 32, Block 143, town of Douglas, described as commencing at a point ninety-four (94) feet north from the southeast corner of lot thirty-two (32), and running thence north forty-eight (48) feet to the northeast corner of said lot thirty-two (32); thence west fifty (50) feet; thence south one hundred and forty-two (142) feet; thence east ten (10) feet; thence north ninety-four (94) feet; thence east forty (40) feet to the place of beginning; the same being all of lots thirty-one (31) and thirty-two (32) in block one hundred and forty-three (143) not heretofore conveyed by one F. L. Blumer to one W. H. Harwood, having been presented in Chambers for allowance, from which it appears that the action of said receiver is in all respects necessary and required, and that said petition should be granted; [121]

NOW, THEREFORE, IT IS HEREBY ORDERED that the action of the said receiver in the matters hereinabove mentioned be and the same is hereby approved and confirmed.

Dated at Phoenix, Arizona, April 23d, 1914, in Chambers.

(Signed) WM. H. SAWTELLE,
Judge of the District Court of the United States for
the District of Arizona. [122]

*In the District Court of the United States in and for
the District of Arizona.*

EQUITY—No. 53.

CHARLES W. CLARK,

Complainant,

vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION. and THE ARI-
ZONA TRUST COMPANY,

Defendants.

**Order [Authorizing and Directing Sims Ely to Sell
Certain Lots, etc.].**

The petition of Sims Ely, General Receiver appointed by this Court for each of the defendants above named, having been presented to me in Chambers at Tucson, Arizona, from which it appears that an order should be made permitting the said Sims Ely to execute and deliver a good and sufficient deed to certain property mentioned and set forth in said petition under the terms and conditions and for the price therein set forth,

NOW, THEREFORE, IT IS HEREBY ORDERED that the said Sims Ely is hereby authorized and directed to sell Lots nine (9), ten (10) and eleven (11) in block thirty-six (36) in Musgrave's Addition to the City of Douglas, Arizona, for a sum not less than Eight Hundred (\$800.00) Dollars, and upon such sale to execute and deliver to the purchaser thereof a good and sufficient deed con-

veying title thereto, anything in the decree and order of this Court dated March 12th, 1914, to the contrary notwithstanding.

Dated May 2d, 1914, at Tucson, Arizona, in Chambers.

WM. H. SAWTELLE,

Judge of the United States Court for the District of Arizona. [123]

[Endorsements]: Equity No. 53. In the District Court of the United States in and for the District of Arizona. Charles W. Clark, Complainant, vs. The Arizona Mutual Savings and Loan Association and The Arizona Trust Company, Defendants. Order. Filed May 2, 1914. George W. Lewis, Clerk. Law Offices: Stoneman & Ling, 405, 406 and 407 Goodrich Block, Phoenix, Arizona. [124]

In the United States District Court for the District of Arizona.

No. 53.

CHARLES W. CLARK,

Appellant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Appellees.

**Order Under Rule 16, Section 1, Enlarging Time to
May 25, 1914, to File Record Thereof and to
Docket Cause.**

On consideration of the application of Mr. George

126 *Farmers and Merchants' Bank, Phoenix, vs.*

W. Lewis, the Clerk of the District Court of the United States for the District of Arizona, and good cause therefor appearing,

IT IS ORDERED that the time within which the original certified Transcript of the Record in the above-entitled cause may be filed, and within which the cause may be docketed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be, and hereby is enlarged to and including the 25th day of May, A. D. 1914.

WM. H. SAWTELLE,
Judge of the United States District Court for the District of Arizona.

Dated at Tucson, Arizona, this 12 day of May, A. D. 1914. [125]

[Endorsed]: No. 53 (Phoenix). In the United States District Court for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association and Arizona Trust Company, Defendants. Order Enlarging Time Within Which to File Certified Transcript of Record. Filed May 13, 1914, at — M. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. [126]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

United States of America,
District of Arizona.—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby

certify that the above and foregoing is a true, perfect and complete copy of the following:

Decree of February 27, 1913;

Petition in Intervention and Motion filed by Benton Dick, Esq., on July 15, 1913;

Petition in Intervention of Farmers and Merchants' Bank, Phoenix, and motion thereon filed July 29, 1913, together with proof of service thereon;

Renewal of Motion on Petition of Farmers and Merchants' Bank, Phoenix;

Decree of March 12, 1914;

Order of March 12, 1914;

All Minute Entries made since Decree February 27, 1913;

Notice of Appeal;

Petition for Appeal, together with order allowing same;

Assignment of Errors;

Bond on Appeal;

Citation;

Praeceptum for Transcript;

—as they appear from the originals thereof, all of which remain on file in my office, except the originals of the Citation and Assignment of Errors, which two last-mentioned papers are hereto annexed;

And I further certify that for the preparation of this transcript, hereto attached, the following charges were made:

Copying 272 folios at 20¢ per folio..\$54.40

Certificate of Clerk, 2 folios at 30¢
per folio..... .60

Seal of Court..... .40

Total..... 55.40

128 *Farmers and Merchants' Bank, Phoenix, vs.*

—and that the said sum of Fifty-five and 40/100 Dollars was paid [127] to me as Clerk of said Court by Paul Renau Ingles, as Solicitor for the Farmers and Merchants' Bank, Phoenix.

WITNESS my hand and the seal of said Court affixed this 20th day of May, A. D. 1914.

[Seal]

GEORGE W. LEWIS,
Clerk.

By Robert E. L. Webb,
Deputy Clerk. [128]

*In the District Court of the United States in and for
the District of Arizona.*

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION and ARIZONA TRUST
COMPANY,

Defendants.

Citation [on Appeal (Original)].

United States of America.

To Arizona Mutual Savings and Loan Association,
the Arizona Trust Company, Sims Ely, Esq., as
Receiver for the Arizona Mutual Savings and
Loan Association and Arizona Trust Company,
and the Intervening Petitioners Who Were
Allowed to Intervene in Said Cause by the De-
cree of March 12, 1914.

You are hereby notified that in a certain case in

equity in the United States District Court in and for the District of Arizona wherein Charles W. Clark is complainant, and the Arizona Mutual Savings and Loan Association and the Arizona Trust Company are defendants, and the Farmers and Merchants' Bank, Phoenix, is or claims to be an intervener, and wherein the persons referred to in the decree of said court entered therein on March 12, 1914, are or claim to be interveners, an appeal has been duly allowed to the Farmers and Merchants' Bank, Phoenix, as intervener therein, to the Circuit Court of Appeals in and for the Ninth Judicial District. You and each of you are hereby cited and admonished to be and appear in the said Court at the city of San Francisco, in the State of California, within thirty days from the date of this citation, to show cause if any there be why the said decree entered in said cause by said Court on [129] March 12, 1914, and why the said order entered in said cause on March 12, 1914, denying the application of the said Farmers and Merchants' Bank, Phoenix, for leave to intervene therein and dismissing the petition of intervention of the said Farmers and Merchants' Bank, Phoenix, each of which is appealed from herein, should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable WILLIAM H. SAWTELLE, Judge of the United States District Court in and for the District of Arizona, this 15th day of April, 1914.

WM. H. SAWTELLE,
Judge of the United States District Court, for the
District of Arizona. [130]

[Endorsed]: No. 53. In the District Court of the United States for the District of Arizona. Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association and Arizona Trust Company, Defendants. Citation. Filed April 15, 1914. George W. Lewis, Clerk.

No. 2425. United States Circuit Court of Appeals for the Ninth Circuit. Citation on Appeal. Filed May 23, 1914. Frank D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. By Meredith Sawyer, Deputy Clerk. [131]

[Endorsed]: No. 2425. United States Circuit Court of Appeals for the Ninth Circuit. Farmers and Merchants' Bank, Phoenix, as Intervener, Appellant, vs. Arizona Mutual Savings and Loan Association and Arizona Trust Company and Sims Ely, as Receiver for the Arizona Mutual Savings and Loan Association and Arizona Trust Company, and the Intervening Petitioners Who Were Allowed to Intervene in the Cause Entitled Charles W. Clark, Complainant, vs. Arizona Mutual Savings and Loan Association and Arizona Trust Company, Defendants, in the Court Below, by the Decree of March 12, 1914, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Received and filed May 23, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.